



# **PROCEDURAL HANDBOOK**

## **Leasing and Permitting Exhibits**

**Issue Date**  
**March 6, 2006**

**Issued By:**

Department of the Interior  
Bureau of Indian Affairs  
Division of Real Estate Services  
1849 C Street, N.W.  
Washington, DC 20240

## **EXHIBITS OVERVIEW**

### **Exhibit 1 – Fiduciary Trust Model (FTM)**

Recently, the Department of the Interior has worked to build a highly effective fiduciary trust services organization. The FTM is the outcome of the business process redesign activity.

### **Exhibit 2 –The Bureau of Indian Affairs Organization**

The Office of the Assistant Secretary for Indian Affairs and the organizational structure of the Bureau of Indian Affairs are explained.

### **Exhibit 3 – Section 221 of AIPRA**

The American Indian Probate Reform Act (AIPRA) Section 221 discusses owner-managed trust interests.

### **Exhibit 4 – 25 CFR 162**

Agricultural, residential and business leases are processed under the regulations found at 25 CFR 162.

### **Exhibit 5 – How to Read a Land Description**

The ability to read and understand land descriptions is an essential competency for realty staff when preparing to issue a grant of easement for right-of-way.

### **Exhibit 6 – Optional and Mandatory Lease Provisions**

Suggested provisions that relate to specific requirements for use of the land may be included in leases.

### **Exhibit 7 – Reporting**

Lease transaction data must be encoded in the overall Real Estate Services Annual Performance, Acreage and Lease (APAL) Report, and the Government Performance Results Act, (GPRA) Report and Transaction Logs.

# Exhibit 1

## Fiduciary Trust Model Overview

## THE FIDUCIARY TRUST MODEL OVERVIEW

The American Indian trust involves the fiduciary management of approximately 56 million acres of land and natural resources for both tribes and individual Indians. The Fiduciary Trust Model (FTM) is designed to enhance beneficiary (American Indians, both tribes and individuals; and Alaska Natives) services, ownership information, land and natural resources assets, trust funds assets, Indian self-governance and self-determination, and administrative services.

The Department of Interior (DOI) developed the Comprehensive Trust Management (CTM) Plan to define an approach for improving performance and accountability in the management of the trust. The CTM provides the overall trust business goals and objectives for the DOI to achieve its fiduciary trust responsibilities and provides the foundation, on which the FTM was designed. In addition to the CTM, recommendations from documenting the Trust “As-Is” Business Model, DOI subject matter experts and Tribal leadership were used in the formulation of the FTM.

The FTM is comprised of five major business processes; Beneficiary Relationship Development and Management (BRDM), Financial Operations, Ownership, Land & Natural Resources Planning, and Land and Natural Resources Use and Management. Ownership is comprised of four sub-processes: Title, Probate, Conveyance, and Survey. Land & Natural Resources Planning comprises of two sub-processes: Planning and Valuation. The FTM is not a static document, but rather a living model that will evolve to continue making improvements as warranted.



## Exhibit 2

# Bureau of Indian Affairs Organization

## **THE OFFICE OF THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS**

This office includes Indian programs at the Secretary level, including economic development, information management and external affairs.

### **The Bureau of Indian Affairs**

#### **BIA Office of Trust Services**

One of the primary directorates under the BIA is the Office of Trust Services. This directorate includes the following responsibilities:

- Managing the Bureau's natural resources programs; Safety of Dams program; irrigation and power systems; energy resources; Land, Title and Records Offices; and minerals management.

#### **Directorate Organization**

The Deputy Bureau Director carries out the mission and functions of the office with assistance from the following divisions:

- Natural Resources
- Real Estate Services
- Forestry
  - Forest Resources Planning
  - Fire Management

#### **The Division of Real Estate Services**

The Division of Real Estate Services (RES) provides assistance, advice, policy, oversight, monitoring, and coordination for the protection, management, planning, conservation, development, utilization, and probate of trust and restricted Federal Indian-owned lands that include acquisition, disposal, tenure, rights-of-way, permits, leasing, and sales.

The Division is also responsible for the administration and maintenance of title documents, document certification, title research and examination, the determination of record title for Federal Indian trust or restricted titles, and issuance of certificate of title, and monitors and evaluates the probate program.

The Division also manages the Bureau's program to accept real estate on behalf of tribes under the Base Realignment and Closure Act and similar programs. The Division has entered into an interagency agreement with the Bureau of Land Management to provide cadastral survey research services for Tribal and individually owned Indian trust and restricted lands.

#### **The Central Office Real Estate Services staff:**

- formulates Real Estate Services policy
- reviews and authorizes any regional handbook addendums of any national RES handbook
- performs oversight reviews
- evaluates the effectiveness of the regional real estate functions
- administers appeals
- performs title research
- reviews and recommends approval/disapproval of requests for declaring reservation lands, waivers of real estate regulations and administers the Bureau's nationwide oil and gas lease bonds
- reviews and makes recommendations for highly controversial real estate transactions
- develops regulations and policies affecting the trust lands and trust resources

### **The Regional Level**

Within the twelve regional offices of the Bureau of Indian Affairs, there is a Real Estate Services program. Regional Offices provide policy direction, technical assistance, training, administrative review, and monitoring in the evaluation of Agency real property operations, thus, ensuring budget and performance integration.

Specific responsibilities include, but are not limited to:

- deciding appeals of Agency actions; assisting in the negotiation of Public Law 93-638 contracts for realty related functions
- litigation support
- review of real property initiatives
- review and approve numerous real estate services transactions, e.g. acquisition, disposal, surface and sub-surface lease, appraisal, and land use planning proposal transactions for Indian tribes who have contracted or compacted the program as well as those Indian tribes and individuals for whom the Regional Office serves as an agency office
- coordinate environmental studies; rights-of-way; easements; exchanges; partitions; patents in fee; removal of restrictions; permits; probate; and initiation of rights protection issues such as trespass and land damages
- technical review of real estate transactions which are for the most part prepared at the Agency level
- approving real estate transactions for contract and self-governance Tribal transactions

## Exhibit 3

### Section 221 of AIPRA



**SEC. 221. OWNER-MANAGED INTERESTS.**

(a) **PURPOSE.**—The purpose of this section is to provide a means for the co-owners of trust or restricted interests in a parcel of land to enter into surface leases of such parcel for certain purposes without approval of the Secretary.

(b) **MINERAL INTERESTS.**—Nothing in this section shall be construed to limit or otherwise affect the application of any Federal law requiring the Secretary to approve mineral leases or other agreements for the development of the mineral interest in trust or restricted land.

(c) **OWNER MANAGEMENT.**—

(1) **IN GENERAL.**—Notwithstanding any provision of Federal law requiring the Secretary to approve individual Indian leases of individual Indian trust or restricted land, where the owners of all of the undivided trust or restricted interests in a parcel of land have submitted applications to the Secretary pursuant to subsection (a), and the Secretary has approved such applications under subsection (d), such owners may, without further approval by the Secretary, enter into a lease of the parcel for agricultural purposes for a term not to exceed 10 years.

(2) **RULE OF CONSTRUCTION.**—No such lease shall be effective until it has been executed by the owners of all undivided trust or restricted interests in the parcel.

(d) **APPROVAL OF APPLICATIONS FOR OWNER MANAGEMENT.**—

(1) **IN GENERAL.**—Subject to the provisions of paragraph (2), the Secretary shall approve an application for owner management submitted by a qualified applicant pursuant to this section unless the Secretary has reason to believe that the applicant is submitting the application as the result of fraud or undue influence. No such application shall be valid or considered if it is received by the Secretary prior to the date that is 1 year after the date on which notice is published pursuant to section 8(a)(4) of the American Indian Probate Reform Act of 2004.

(2) **COMMENCEMENT OF OWNER-MANAGED STATUS.**—Notwithstanding the approval of 1 or more applications pursuant to paragraph (1), no trust or restricted interest in a parcel of land shall acquire owner-managed status until applications for all of the trust or restricted interests in such parcel of land have been submitted to and approved by the Secretary pursuant to this section.

(e) **VALIDITY OF LEASES.**—No lease of trust or restricted interests in a parcel of land that is owner-managed under this section shall be valid or enforceable against the owners of such interests, or against the land, the interest or the United States, unless such lease— (1) is consistent with, and entered into in accordance with the requirements of this section; or (2) has been approved by the Secretary in accordance with other Federal laws applicable to the leasing of trust or restricted land.

(f) **LEASE REVENUES.**—The Secretary shall not be responsible for the collection of, or accounting for, any lease revenues accruing to any interests under a lease authorized by subsection (e), so long as such interest is in owner-managed status under the provisions of this section.

(g) **JURISDICTION.**—

(1) **JURISDICTION UNAFFECTED BY STATUS.**—The Indian tribe with jurisdiction over an interest in trust or restricted land that becomes owner-managed pursuant to this section shall continue to have jurisdiction over the interest to the same extent and in all respects that such tribe had prior to the interest acquiring owner-managed status.

(2) **PERSONS USING LAND.**—Any person holding, leasing, or otherwise using such interest in land shall be considered to consent to the jurisdiction of the Indian tribe referred to in paragraph (1), including such tribe's laws and regulations, if any, relating to the use, and any effects associated with the use, of the interest.

(h) **CONTINUATION OF OWNER-MANAGED STATUS; REVOCATION.**—

(1) **IN GENERAL.**—Subject to the provisions of paragraph (2), after the applications of the owners of all of the trust or restricted interests in a parcel of land have been approved by the Secretary pursuant to subsection (d), each such interest shall continue in owner-managed status under this section notwithstanding any subsequent conveyance of the interest in trust or restricted status to another person or the subsequent descent of the interest in trust or restricted status by testate or interstate succession to 1 or more heirs.

(2) **REVOCATION.**—Owner-managed status of an interest may be revoked upon written request of the owners (including the parents or legal guardians of minors or incompetent owners) of all trust or restricted interests in the parcel, submitted to the Secretary in accordance with regulations adopted under subsection (l). The revocation shall become effective as of the date on which the last of all such requests has been delivered to the Secretary.

(3) **EFFECT OF REVOCATION.**—Revocation of owner-managed status under paragraph (2) shall not affect the validity of any lease made in accordance with the provisions of this section prior to the effective date of the revocation, provided that, after such revocation becomes effective, the Secretary shall be responsible for the collection of, and accounting for, all future lease revenues accruing to the trust or restricted interests in the parcel from and after such effective date.

(i) **DEFINED TERMS.**—

(1) For purposes of subsection (d)(1), the term “qualified applicant” means— (A) a person over the age of 18 who owns a trust or restricted interest in a parcel of land; and (B) the parent or legal guardian of a minor or incompetent person who owns a trust or restricted interest in a parcel of land .

(2) For purposes of this section, the term “owner-managed status” means, with respect to a trust or restricted interest, that—

(A) the interest is a trust or restricted interest in a parcel of land for which applications covering all trust or restricted interests in such parcel have been submitted to and approved by the Secretary pursuant to subsection (d); (B) the interest may be leased without approval of the Secretary pursuant to, and in a manner that is consistent with, the requirements of this section; and (C) no revocation has occurred under subsection (h)(2).

(j) **SECRETARIAL APPROVAL OF OTHER TRANSACTIONS.**—Except with respect to the specific lease transaction described in paragraph (1) of subsection (c), interests that acquire owner-managed status under the provisions of this section shall continue to be subject to all Federal laws requiring the Secretary to approve transactions involving trust or restricted land

(including leases with terms of a duration in excess of 10 years) that would otherwise apply to such interests if the interests had not acquired owner-managed status under this section.

(k) EFFECT OF SECTION.—Subject to subsections (c), (f), and (h), nothing in this section diminishes or otherwise affects any authority or responsibility of the Secretary with respect to an interest in trust or restricted land.

## Exhibit 4

### 25 CFR Part 162

## **25 CFR PART 162—LEASES AND PERMITS**

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AUTHORITY: 5 U.S.C. 301, R.S. 463 and 465; 25U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968, 107 Stat. 2011, 108 Stat. 4572, March 20, 1996, 110 Stat. 4016; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 409a, 413, 415, 415a, 415b, 415c, 415d, 477, 635, 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733; 44 U.S.C. 3101 *et seq.*

SOURCE: 66 FR 7109, Jan. 22, 2001, unless otherwise noted.

### **Subpart A—General Provisions**

#### **§ 162.100 What are the purposes of this part?**

- (a) The purposes of this part are to:
- (1) Identify the conditions and authorities under which certain interests in Indian land and Government land may be leased;
  - (2) Describe the manner in which various types of leases may be obtained;
  - (3) Identify terms and conditions that may be required in various types of leases;
  - (4) Describe the policies and procedures that will be applied in the administration and enforcement of various types of leases; and
  - (5) Identify special requirements that apply to leases made under special acts of Congress that apply only to certain Indian reservations.
- (b) This part includes six subparts, including separate, self-contained subparts relating to Agricultural Leases (Subpart B), Residential Leases (Subpart C, reserved), Business Leases (Subpart D, reserved), and Non-Agricultural Leases (Subpart F), respectively. Subpart E identifies special provisions applicable only to leases made under special acts of Congress that apply only to certain Indian reservations. Leases covered by subpart E are also subject to the general provisions in subparts A through F, respectively, except to the extent those general provisions are inconsistent with any of the special provisions in subpart E or any special act of Congress under which those leases are made.
- (c) These regulations apply to all leases in effect when the regulations are promulgated; however, unless otherwise agreed by the parties, these regulations will not affect the validity or terms of any existing lease.

#### **§ 162.101 What key terms do I need to know?**



For purposes of this part:

**Adult** means an individual who is 18 years of age or older.

**Agricultural land** means Indian land or Government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.

**Agricultural lease** means a lease of agricultural land for farming and/or grazing purposes.

**AIARMA** means the American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), as amended on November 2, 1994 (108 Stat. 4572).

**Assignment** means an agreement between a tenant and an assignee, whereby the assignee acquires all of the tenant's rights, and assumes all of the tenant's obligations, under a lease.

**BIA** means the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of BIA under § 162.109 of this part.

**Bond** means security for the performance of certain lease obligations, as furnished by the tenant, or a guaranty of such performance as furnished by a third-party surety.

**Day** means a calendar day.

**Emancipated minor** means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

**Fair annual rental** means the amount of rental income that a leased tract of Indian land would most probably command in an open and competitive market.

**Fee interest** means an interest in land that is owned in unrestricted fee status, and is thus freely alienable by the fee owner.

**Fractionated tract** means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

**Government land** means any tract, or interest therein, in which the surface estate is owned by the United States and administered by BIA, not including tribal land that has been reserved for administrative purposes.

**Immediate family** means a spouse, brother, sister, lineal ancestor, lineal descendant, or member of the household of an individual Indian landowner.

**Indian land** means any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status.

**Indian landowner** means a tribe or individual Indian who owns an interest in Indian land in trust or restricted status.

**Individually-owned land** means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

**Interest**, when used with respect to Indian land, means an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.

**Lease** means a written agreement between Indian landowners and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of Indian land, for a specified purpose and duration. Unless otherwise provided, the use of this term will also include permits, as appropriate.

**Lessee** means tenant, as defined in this section.

**Life estate** means an interest in Indian land that is limited, in duration, to the life of the life tenant holding the interest, or the life of some other person.

**Majority interest** means more than 50% of the trust or restricted interests in a tract of Indian land.

**Minor** means an individual who is less than 18 years of age.

**Mortgage** means a mortgage, deed of trust or other instrument that pledges a tenant's leasehold interest as security for a debt or other obligation owed by the tenant to a lender or other mortgagee.

**NEPA** means the National Environmental Policy Act (42 U.S.C. § 4321, *et seq.*)

**Non compos mentis** means a person who has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

**Permit** means a written agreement between Indian landowners and the applicant for the permit, also referred to as a permittee, whereby the permittee is granted a revocable privilege to use Indian land or Government land, for a specified purpose.

**Remainder** means an interest in Indian land that is created at the same time as a life estate, for the use and enjoyment of its owner after the life estate terminates.

**Restricted land or restricted status** means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

**Secretary** means the Secretary of the Interior or an authorized representative.

**Sublease** means a written agreement by which the tenant grants to an individual or entity a right to possession no greater than that held by the tenant under the lease.

**Surety** means one who guarantees the performance of another.

**Tenant** means a person or entity who has acquired a legal right of possession to Indian land by a lease or permit under this part.

**Trespass** means an unauthorized possession, occupancy or use of Indian land.

**Tribal land** means the surface estate of land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 476).

**Tribal laws** means the body of law that governs land and activities under the jurisdiction of a tribe, including ordinances and other enactments by the tribe, tribal court rulings, and tribal common law.

**Trust land** means any tract, or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

**Undivided interest** means a fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners.

**Us/We/Our** means the Secretary or BIA and any tribe acting on behalf of the Secretary or BIA under § 162.110 of this part.

**USPAP** means the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

#### **§ 162.102 What land, or interests in land, are subject to these regulations?**

- (a) These regulations apply to Indian land and Government land, including any tract in which an interest is owned by an individual Indian or tribe in trust or restricted status.
- (b) Where a life estate and remainder interest are both owned in trust or restricted status, the life estate and remainder interest must both be leased under these regulations, unless the lease is for less than one year in duration. Unless otherwise provided by the document creating the

life estate or by agreement, rent payable under the lease must be paid to the life tenant under part 179 of this chapter.

- (c) In approving a lease under these regulations, we will not lease any fee interest in Indian land, nor will we collect rent on behalf of any fee owners. The leasing of the trust and restricted interests of the Indian landowners will not be conditioned on a lease having been obtained from the owners of any fee interests. Where all of the trust or restricted interests in a tract are subject to a life estate held in fee status, we will approve a lease of the remainder interests only if such action is necessary to preserve the value of the land or protect the interests of the Indian landowners.
- (d) These regulations do not apply to tribal land that is leased under a corporate charter issued by us pursuant to 25 U.S.C. § 477, or under a special act of Congress authorizing leases without our approval under certain conditions, except to the extent that the authorizing statutes require us to enforce such leases on behalf of the Indian landowners.
- (e) To the extent any regulations in this part conflict with the Indian Land Consolidation Act Amendments of 2000, Public Law 106–462, the provisions of that Act will govern.

### **§ 162.103 What types of land use agreements are covered by these regulations?**

(a) These regulations cover leases that authorize the possession of Indian land. These regulations do not apply to:

- (1) Mineral leases, prospecting permits, or mineral development agreements, as covered by parts 211, 212 and 225 of this chapter and similar parts specific parts specific to particular tribes;
  - (2) Grazing permits, as covered by part 166 of this chapter and similar parts specific parts specific to particular tribes;
  - (3) Timber contracts, as covered by part 163 of this chapter;
  - (4) Management contracts, joint venture agreements, or other encumbrances of tribal land, as covered by 25 U.S.C. § 81, as amended;
  - (5) Leases of water rights associated with Indian land, except to the extent the use of such water rights is incorporated in a lease of the land itself; and
  - (6) Easements or rights-of-way, as covered by part 169 of this chapter.
- (b) Where appropriate, the regulations in this part that specifically refer to leases will apply to permits that authorize the temporary, non-possessory use of Indian land or Government land, not including:
- (1) Land assignments and similar instruments authorizing temporary uses by tribal members, in accordance with tribal laws or custom; and
  - (2) Trader's licenses issued under part 140 of this chapter.

### **§ 162.104 When is a lease needed to authorize possession of Indian Land?**

- (a) An Indian landowner who owns 100% of the trust or restricted interests in a tract may take possession without a lease or any other prior authorization from us.
- (b) An Indian landowner of a fractional interest in a tract must obtain a lease of the other trust and restricted interests in the tract, under these regulations, unless the Indian co-owners have given the landowner's permission to take or continue in possession without a lease.
- (c) A parent or guardian of a minor child who owns 100% of the trust interests in the land may take possession without a lease. We may require that the parent or guardian provide evidence of a direct benefit to the minor child. When the child reaches the age of majority, a lease must be obtained under these regulations to authorize continued possession.

- (d) Any other person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a lease under these regulations before taking possession.

**§ 162.105 Can tracts with different Indian landowners be unitized for leasing purposes?**

- (a) A lease negotiated by Indian landowners may cover more than one tract of Indian land, but the minimum consent requirements for leases granted by Indian landowners under subparts B through D of this part will apply to each tract separately. We may combine multiple tracts into a unit for leases negotiated or advertised by us, if we determine that unitization is in the Indian landowners' best interests and consistent with the efficient administration of the land.
- (b) Unless otherwise provided in the lease, the rent or other consideration derived from a unitized lease will be distributed based on the size of each landowner's interest in proportion to the acreage within the entire unit.

**§ 162.106 What will BIA do if possession is taken without an approved lease or other proper authorization?**

- (a) If a lease is required, and possession is taken without a lease by a party other than an Indian landowner of the tract, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the party in possession is engaged in negotiations with the Indian landowners to obtain a lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law.
- (b) Where a trespass involves Indian agricultural land, we will also assess civil penalties and costs under part 166, subpart I, of this chapter.

**§ 162.107 What are BIA's objectives in granting or approving leases?**

- (a) We will assist Indian landowners in leasing their land, either through negotiations or advertisement. In reviewing a negotiated lease for approval, we will defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible. In granting a lease on the landowners' behalf, we will obtain a fair annual rental and attempt to ensure (through proper notice) that the use of the land is consistent with the landowners' wishes. We will also recognize the rights of Indian landowners to use their own land, so long as their Indian co-owners are in agreement and the value of the land is preserved.
- (b) We will recognize the governing authority of the tribe having jurisdiction over the land to be leased, preparing and advertising leases in accordance with applicable tribal laws and policies. We will promote tribal control and self-determination over tribal land and other land under the tribe's jurisdiction, through contracts and self governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450f *et seq.*

**§ 162.108 What are BIA's responsibilities in administering and enforcing leases?**

- (a) We will ensure that tenants meet their payment obligations to Indian landowners, through the collection of rent on behalf of the landowners and the prompt initiation of appropriate collection and enforcement actions. We will also assist landowners in the enforcement of payment obligations that run directly to them, and in the exercise of any negotiated remedies that apply in addition to specific remedies made available to us under these or other regulations.
- (b) We will ensure that tenants comply with the operating requirements in their leases, through appropriate inspections and enforcement actions as needed to protect the interests of the

Indian landowners and respond to concerns expressed by them. We will take immediate action to recover possession from trespassers operating without a lease, and take other emergency action as needed to preserve the value of the land.

**§ 162.109 What laws, other than these regulations, will apply to leases granted or approved under this part?**

- (a) Leases granted or approved under this part will be subject to federal laws of general applicability and any specific federal statutory requirements that are not incorporated in these regulations.
- (b) Tribal laws generally apply to land under the jurisdiction of the tribe enacting such laws, except to the extent that those tribal laws are inconsistent with these regulations or other applicable federal law. These regulations may be superseded or modified by tribal laws, however, so long as:
  - (1) The tribal laws are consistent with the enacting tribe's governing documents;
  - (2) The tribe has notified us of the superseding or modifying effect of the tribal laws;
  - (3) The superseding or modifying of the regulation would not violate a federal statute or judicial decision, or conflict with our general trust responsibility under federal law; and
  - (4) The superseding or modifying of the regulation applies only to tribal land.
- (c) State law may apply to lease disputes or define the remedies available to the Indian landowners in the event of a lease violation by the tenant, if the lease so provides and the Indian landowners have expressly agreed to the application of state law.

**§ 162.110 Can these regulations be administered by tribes, on the Secretary's or on BIA's behalf?**

Except insofar as these regulations provide for the granting, approval, or enforcement of leases and permits, the provisions in these regulations that authorize or require us to take certain actions will extend to any tribe or tribal organization that is administering specific programs or providing specific services under a contract or self-governance compact entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450f *et seq.*).

**§ 162.111 Who owns the records associated with this part?**

- (a) Records are the property of the United States if they:
  - (1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under 25 U.S.C. § 450f *et seq.*, including the operation of a trust program; and
  - (2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.
- (b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

**§ 162.112 How must records associated with this part be preserved?**

- (a) Any organization, including tribes and tribal organizations, that have records identified in § 162.111(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

- (b) A tribe or tribal organization should preserve the records identified in § 162.111(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

**§ 162.113 May decisions under this part be appealed?**

Yes. Except where otherwise provided in this part, appeals from decisions by the BIA under this part may be taken pursuant to 25 CFR part 2.

**Subpart B - Agricultural Leases- General Provisions**

**§ 162.200 What types of leases are covered by this subpart?**

The regulations in this subpart apply to agricultural leases, as defined in this part. The regulations in this subpart may also apply to business leases on agricultural land, where appropriate.

**§ 162.201 Must agricultural land be managed in accordance with a tribe's agricultural resource management plan?**

- (a) Agricultural land under the jurisdiction of a tribe must be managed in accordance with the goals and objectives in any agricultural resource management plan developed by the tribe, or by us in close consultation with the tribe, under AIARMA.
- (b) A ten-year agricultural resource management and monitoring plan must be developed through public meetings and completed within three years of the initiation of the planning activity. Such a plan must be developed through public meetings, and be based on the public meeting records and existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:
- (1) Determine available agricultural resources;
  - (2) Identify specific tribal agricultural resource goals and objectives;
  - (3) Establish management objectives for the resources;
  - (4) Define critical values of the Indian tribe and its members and identify holistic management objectives; and
  - (5) Identify actions to be taken to reach established objectives.
- (c) Where the regulations in this subpart are inconsistent with a tribe's agricultural resource management plan, we may waive the regulations under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

**§ 162.202 How will tribal laws be enforced on agricultural land?**

- (a) Unless prohibited by federal law, we will recognize and comply with tribal laws regulating activities on agricultural land, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.
- (b) While the tribe is primarily responsible for enforcing tribal laws pertaining to agricultural land, we will:
- (1) Assist in the enforcement of tribal laws;

- (2) Provide notice of tribal laws to persons or entities undertaking activities on agricultural land, under § 162.204(c) of this subpart; and
- (3) Require appropriate federal officials to appear in tribal forums when requested by the tribe, so long as such an appearance would not:
  - (i) Be inconsistent with the restrictions on employee testimony set forth at 43 CFR Part 2, Subpart E;
  - (ii) Constitute a waiver of the sovereign immunity of the United States; or
  - (iii) Authorize or result in a review of our actions by a tribal court.
- (c) Where the regulations in this subpart are inconsistent with a tribal law, but such regulations cannot be superseded or modified by the tribal law under § 162.109 of this part, we may waive the regulations under part 1 of this chapter, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

**§ 162.203 When can the regulations in this subpart be superseded or modified by tribal laws and leasing policies?**

- (a) The regulations in this subpart may be superseded or modified by tribal laws, under the circumstances described in § 162.109(b) of this part.
- (b) When specifically authorized by an appropriate tribal resolution establishing a general policy for the leasing of tribal and individually-owned agricultural land, we will:
  - (1) Waive the general prohibition against tenant preferences in leases advertised for bid under § 162.212 of this subpart, by allowing prospective Indian tenants to match the highest responsible bid (unless the tribal leasing policy specifies some other manner in which the preference must be afforded);
  - (2) Waive the requirement that a tenant post a bond under § 162.234 of this subpart;
  - (3) Modify the requirement that a tenant post a bond in a form described in § 162.235 of this subpart;
  - (4) Approve leases of tribal land at rates established by the tribe, as provided in § 162.222(b) of this subpart.
- (c) When specifically authorized by an appropriate tribal resolution establishing a general policy for the leasing of “highly fractionated undivided heirship lands” (as defined in the tribal leasing policy), we may waive or modify the three-month notice requirement in § 162.209(b) of this subpart, so long as:
  - (1) The tribal law or leasing policy adopts an alternative plan for providing notice to Indian landowners, before an agricultural lease is granted by us on their behalf; and
  - (2) A waiver or modification of the three-month notice requirement is needed to prevent waste, reduce idle land acreage, and ensure lease income to the Indian landowners.
- (d) Tribal leasing policies of the type described in paragraphs (b) through (c) of this section will not apply to individually- owned land that has been made exempt from such laws or policies under § 162.205 of this subpart.

**§ 162.204 Must notice of applicable tribal laws and leasing policies be provided?**

- (a) A tribe must provide us with an official copy of any tribal law or leasing policy that supersedes or modifies these regulations under §§ 162.109 or 162.203 of this part. If the tribe has not already done so, we will provide notice of such a tribal law or leasing policy to affected Indian landowners and persons or entities undertaking activities on agricultural land.

Such notice will be provided in the manner described in paragraphs (b) through (c) of this section.

- (b) We will provide notice to Indian landowners, as to the superseding or modifying effect of any tribal leasing policy and their right to exempt their land from such a policy. Such notice will be provided by:
  - (1) Written notice included in a notice of our intent to lease the land, issued under § 162.209(b) of this subpart; or
  - (2) Public notice posted at the tribal community building or the United States Post Office, or published in the local newspaper that serves the area in which the Indian owners' land is located, at the time the tribal leasing policy is adopted.
- (c) We will provide notice to persons or entities undertaking activities on agricultural land, as to the general applicability of tribal laws and the superseding or modifying effect of particular tribal laws and leasing policies. Such notice will be provided by:
  - (1) Written notice included in advertisements for lease, issued under § 162.212 of this subpart; or
  - (2) Public notice posted at the tribal community building or the United States Post Office, or published in a local newspaper of general circulation, at the time the tribal law is enacted or the leasing policy adopted.

**§ 162.205 Can individual Indian landowners exempt their agricultural land from certain tribal leasing policies?**

- (a) Individual Indian landowners may exempt their agricultural land from the application of a tribal leasing policy of a type described in § 162.203(b) through (c) of this subpart, if the Indian owners of at least 50% of the trust or restricted interests in the land submit a written objection to us before a lease is granted or approved.
- (b) Upon our receipt of a written objection from the Indian landowners that satisfies the requirements of paragraph (a) of this section, we will notify the tribe that the owners' land has been exempted from a specific tribal leasing policy. If the exempted land is part of a unitized lease tract, such land will be removed from the unit and leased separately, if appropriate.
- (c) The procedures described in paragraphs (a) and (b) of this section will also apply to withdrawing an approved exemption.

**HOW TO OBTAIN A LEASE**

**§ 162.206 Can the terms of an agricultural lease be negotiated with the Indian landowners?**

An agricultural lease may be obtained through negotiation. We will assist prospective tenants in contacting the Indian landowners or their representatives for the purpose of negotiating a lease, and we will assist the landowners in those negotiations upon request.

**§ 162.207 When can the Indian landowners grant an agricultural lease?**

- (a) Tribes grant leases of tribally-owned agricultural land, including any tribally-owned undivided interest(s) in a fractionated tract, subject to our approval. Where tribal land is subject to a land assignment made to a tribal member or some other individual under tribal law or custom, the individual and the tribe must both grant the lease, subject to our approval.
- (b) Adult Indian owners, or emancipated minors, may grant agricultural leases of their land, including undivided interests in fractionated tracts, subject to our approval.



- (c) An agricultural lease of a fractionated tract may be granted by the owners of a majority interest in the tract, subject to our approval. Although prior notice to non-consenting individual Indian landowners is generally not needed prior to our approval of such a lease, a right of first refusal must be offered to any non-consenting Indian landowner who is using the entire lease tract at the time the lease is entered into by the owners of a majority interest. Where the owners of a majority interest grant such a lease on behalf of all of the Indian owners of a fractionated tract, the non-consenting Indian landowners must receive a fair annual rental.
- (d) As part of the negotiation of a lease, Indian landowners may advertise their land to identify potential tenants with whom to negotiate.

**§ 162.208 Who can represent the Indian landowners in negotiating or granting an agricultural lease?**

The following individuals or entities may represent an individual Indian landowner:

- (a) An adult with custody acting on behalf of his or her minor children;
- (b) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;
- (c) An adult or legal entity who has been given a written power of attorney that:
  - (1) Meets all of the formal requirements of any applicable tribal or state law;
  - (2) Identifies the attorney-in-fact and the land to be leased; and
  - (3) Describes the scope of the power granted and any limits thereon.

**§ 162.209 When can BIA grant an agricultural lease on behalf of an Indian landowner?**

- (a) We may grant an agricultural lease on behalf of:
  - (1) Individuals who are found to be non compos mentis by a court of competent jurisdiction;
  - (2) Orphaned minors;
  - (3) The undetermined heirs and devisees of deceased Indian owners;
  - (4) Individuals who have given us a written power of attorney to lease their land; and
  - (5) Individuals whose whereabouts are unknown to us, after reasonable attempts are made to locate such individuals; and
  - (6) The individual Indian landowners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.
- (b) We may grant an agricultural lease on behalf of all of the individual Indian owners of a fractionated tract, where:
  - (1) We have provided the Indian landowners with written notice of our intent to grant a lease on their behalf, but the Indian landowners are unable to agree upon a lease during a three month negotiation period immediately following such notice, or any other notice period established by a tribe under § 162.203(c) of this subpart; and
  - (2) The land is not being used by an Indian landowner under § 162.104(b) of this part.

**§ 162.210 When can BIA grant a permit covering agricultural land?**

- (a) We may grant a permit covering agricultural land in the same manner as we would grant an agricultural lease under § 162.209 of this part. We may also grant a permit on behalf of individual Indian landowners, without prior notice, if it is impractical to provide notice to the owners and no substantial injury to the land will occur.
- (b) We may grant a permit covering agricultural land, but not an agricultural lease, on government land.

- (c) We will not grant a permit on tribal agricultural land, but a tribe may grant a permit, subject to our approval, in the same manner as it would grant a lease under § 162.207(a) of this subpart.

**§ 162.211 What type of valuation or evaluation methods will be applied in estimating the fair annual rental of Indian land?**

- (a) To support the Indian landowners in their negotiations, and to assist in our consideration of whether an agricultural lease is in the Indian landowners' best interest, we must determine the fair annual rental of the land prior to our grant or approval of the lease, unless the land may be leased at less than a fair annual rental under § 162.222(b) through (c) of this subpart.
- (b) A fair annual rental may be determined by competitive bidding, appraisal, or any other appropriate valuation method. Where an appraisal or other valuation is needed to determine the fair annual rental, the appraisal or valuation must be prepared in accordance with USPAP.

**§ 162.212 When will the BIA advertise Indian land for agricultural leases?**

- (a) We will generally advertise Indian land for agricultural leasing:
  - (1) At the request of the Indian landowners; or
  - (2) Before we grant a lease under § 162.209(b) of this subpart.
- (b) Advertisements will provide prospective tenants with notice of any superseding tribal laws and leasing policies that have been made applicable to the land under §§ 162.109 and 162.203 of this part, along with certain standard terms and conditions to be included in the lease. Advertisements will prohibit tenant preferences, and bidders at lease sales will not be afforded any preference, unless a preference in favor of individual Indians is required by a superseding tribal law or leasing policy.
- (c) Advertisements will require sealed bids, and they may also provide for further competitive bidding among the prospective tenants at the conclusion of the bid opening. Competitive bidding should be supported, at a minimum, by a market study or rent survey that is consistent with USPAP.

**§ 162.213 What supporting documents must be provided prior to BIA's grant or approval of an agricultural lease?**

- (a) If the tenant is a corporation, partnership or other legal entity, it must provide organizational and financial documents, as needed to show that the lease will be enforceable against the tenant and the tenant will be able to perform all of its lease obligations.
- (b) Where a bond is required under § 162.234 of this subpart, the bond must be furnished before we grant or approve the lease.
- (c) The tenant must provide environmental and archaeological reports, surveys, and site assessments, as needed to document compliance with NEPA and other applicable federal and tribal land use requirements.

**§ 162.214 How and when will BIA decide whether to approve an agricultural lease?**

- (a) Before we approve a lease, we must determine in writing that the lease is in the best interest of the Indian landowners. In making that determination, we will:
  - (1) Review the lease and supporting documents;
  - (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances (including preparation of the appropriate review documents under NEPA);

- (3) Assure ourselves that adequate consideration has been given, as appropriate, to:
  - (i) The relationship between the use of the leased premises and the use of neighboring lands;
  - (ii) The height, quality, and safety of any structures or other facilities to be constructed on the leased premises;
  - (iii) The availability of police and fire protection, utilities, and other essential community services;
  - (iv) The availability of judicial forums for all criminal and civil matters arising on the leased premises; and
  - (v) The effect on the environment of the proposed land use.
- (4) Require any lease modifications or mitigation measures that are needed to satisfy any requirements of this subpart, or any other federal or tribal land use requirements.
- (b) Where an agricultural lease is in a form that has previously been accepted or approved by us, and all of the documents needed to support the findings required by paragraph (a) of this section have been received, we will decide whether to approve the lease within 30 days of the date of our receipt of the lease and supporting documents. If we decide to approve or disapprove a lease, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this chapter. Copies of agricultural leases that have been approved will be provided to the tenant, and made available to the Indian landowners upon request.

**§ 162.215 When will an agricultural lease be effective?**

Unless otherwise provided in the lease, an agricultural lease will be effective on the date on which the lease is approved by us. An agricultural lease may be made effective on some past or future date, by agreement, but such a lease may not be approved more than one year prior to the date on which the lease term is to commence.

**§ 162.216 When will a BIA decision to approve an agricultural lease be effective?**

Our decision to approve an agricultural lease will be effective immediately, notwithstanding any appeal that may be filed under part 2 of this chapter.

**§ 162.217 Must an agricultural lease or permit be recorded?**

- (a) An agricultural lease or permit must be recorded in our Land Titles and Records Office with jurisdiction over the land. We will record the lease or permit immediately following our approval under this subpart.
- (b) Agricultural leases of tribal land that do not require our approval, under § 162.102 of this part, must be recorded by the tribe in our Land Titles and Records Office with jurisdiction over the land.

**LEASE REQUIREMENTS**

**§ 162.218 Is there a standard agricultural lease form?**

Based on the need for flexibility in advertising, negotiating and drafting of appropriate lease terms and conditions, there is no standard agricultural lease form that must be used. We will assist the Indian landowners in drafting lease provisions that conform to the requirements of this part.

**§ 162.219 Are there any provisions that must be included in an agricultural lease?**

In addition to the other requirements of this part, all agricultural leases must provide that:

- (a) The obligations of the tenant and its sureties to the Indian landowners will also be enforceable by the United States, so long as the land remains in trust or restricted status;
- (b) Nothing contained in this lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land;
- (c) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises; and
- (d) The tenant must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including tribal laws and leasing policies.

**§ 162.220 Are there any formal requirements that must be satisfied in the execution of an agricultural lease?**

- (a) An agricultural lease must identify the Indian landowners and their respective interests in the leased premises, and the lease must be granted by or on behalf of each of the Indian landowners. One who executes a lease in a representative capacity under § 162.208 of this subpart must identify the owner being represented and the authority under which such action is being taken.
- (b) An agricultural lease must be executed by individuals having the necessary capacity and authority to bind the tenant under applicable law.
- (c) An agricultural lease must include a citation of the provisions in this subpart that authorize our approval, along with a citation of the formal documents by which such authority has been delegated to the official taking such action.

**§ 162.221 How should the land be described in an agricultural lease?**

An agricultural lease should describe the leased premises by reference to a public or private survey, if possible. If the land cannot be so described, the lease must include a legal description or other description that is sufficient to identify the leased premises, subject to our approval. Where there are undivided interests owned in fee status, the aggregate portion of trust and restricted interests should be identified in the description of the leased premises.

**§ 162.222 How much rent must be paid under an agricultural lease?**

- (a) An agricultural lease must provide for the payment of a fair annual rental at the beginning of the lease term, unless a lesser amount is permitted under paragraphs (b) through (d) of this section. The tenant's rent payments may be:
  - (1) In fixed amounts; or
  - (2) Based on a share of the agricultural products generated by the lease, or a percentage of the income to be derived from the sale of such agricultural products.
- (b) We will approve an agricultural lease of tribal land at a nominal rent, or at less than a fair annual rental, if such a rent is negotiated or established by the tribe.
- (c) We will approve an agricultural lease of individually-owned land at a nominal rent or at less than a fair annual rental, if:
  - (1) The tenant is a member of the Indian landowner's immediate family, or a co-owner in the lease tract; or

- (2) The tenant is a cooperative or other legal entity in which the Indian landowners directly participate in the revenues or profits generated by the lease.
- (d) We will grant or approve a lease at less than a fair annual rental, as previously determined by an appraisal or some other appropriate valuation method, if the land is subsequently advertised and the tenant is the highest responsible bidder.

**§ 162.223 Must the rent be adjusted under an agricultural lease?**

- (a) Except as provided in paragraph (c) of this section, an agricultural lease must provide for one or more rental adjustments if the lease term runs more than five years, unless the lease provides for the payment of:
  - (1) Less than a fair annual rental, as permitted under § 162.222(b) through (c) of this part; or
  - (2) A rental based primarily on a share of the agricultural products generated by the lease, or a percentage of the income derived from the sale of agricultural products.
- (b) If rental adjustments are required, the lease must specify:
  - (1) How adjustments are made;
  - (2) Who makes the adjustments;
  - (3) When the adjustments are effective; and
  - (4) How disputes about the adjustments are resolved.
- (c) An agricultural lease of tribal land may run for a term of more than five years, without providing for a rental adjustment, if the tribe establishes such a policy under § 162.203(b)(4) and negotiates such a lease.

**§ 162.224 When are rent payments due under an agricultural lease?**

An agricultural lease must specify the dates on which all rent payments are due. Unless otherwise provided in the lease, rent payments may not be made or accepted more than one year in advance of the due date. Rent payments are due at the time specified in the lease, regardless of whether the tenant receives an advance billing or other notice that a payment is due.

**§ 162.225 Will untimely rent payments made under an agricultural lease be subject to interest charges or late payment penalties?**

An agricultural lease must specify the rate at which interest will accrue on any rent payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the tenant from us or the Indian landowners, and the failure to pay such amounts will be treated as a lease violation under § 162.251 of this subpart.

**§ 162.226 To whom can rent payments be made under an agricultural lease?**

- (a) An agricultural lease must specify whether rent payments will be made directly to the Indian landowners or to us on behalf of the Indian landowners. If the lease provides for payment to be made directly to the Indian landowners, the lease must also require that the tenant retain specific documentation evidencing proof of payment, such as canceled checks, cash receipt vouchers, or copies of money orders or cashier's checks, consistent with the provisions of §§ 162.112 and 162.113 of this part.
- (b) Rent payments made directly to the Indian landowners must be made to the parties specified in the lease, unless the tenant receives notice of a change of ownership. Unless otherwise

provided in the lease, rent payments may not be made payable directly to anyone other than the Indian landowners.

- (c) A lease that provides for rent payments to be made directly to the Indian landowners must also provide for such payments to be suspended and the rent thereafter paid to us, rather than directly to the Indian landowners, if:
- (1) An Indian landowner dies;
  - (2) An Indian landowner requests that payment be made to us;
  - (3) An Indian landowner is found by us to be in need of assistance in managing his/her financial affairs; or
  - (4) We determine, in our discretion and after consultation with the Indian landowner(s), that direct payment should be discontinued

**§ 162.227 What form of rent payment can be accepted under an agricultural lease?**

- (a) When rent payments are made directly to the Indian landowners, the form of payment must be acceptable to the Indian landowners.
- (b) Payments made to us may be delivered in person or by mail. We will not accept cash, foreign currency, or third-party checks. We will accept:
- (1) Personal or business checks drawn on the account of the tenant;
  - (2) Money orders;
  - (3) Cashier's checks;
  - (4) Certified checks; or
  - (5) Electronic funds transfer payments.

**§ 162.228 What other types of payments are required under an agricultural lease?**

- (a) The tenant may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by the tribe having jurisdiction over the land. The tenant must pay these amounts to the appropriate tribal official.
- (b) Except as otherwise provided in part 171 of this chapter, if the leased premises are within an Indian irrigation project or drainage district, the tenant must pay all operation and maintenance charges that accrue during the lease term. The tenant must pay these amounts to the appropriate official in charge of the irrigation project or drainage district. Failure to make such payments will constitute a violation of the lease under § 162.251.

**§ 162.229 How long can the term of an agricultural lease run?**

- (a) An agricultural lease must provide for a definite lease term, specifying the commencement date. The commencement date of the lease may not be more than one year after the date on which the lease is approved.
- (b) The lease term must be reasonable, given the purpose of the lease and the level of investment required. Unless otherwise provided by statute, the maximum term may not exceed ten years, unless a substantial investment in the improvement of the land is required. If such a substantial investment is required, the maximum term may be up to 25 years.
- (c) Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.
- (d) An agricultural lease may not provide the tenant with an option to renew, and such a lease may not be renewed or extended by holdover.

**§ 162.230 Can an agricultural lease be amended, assigned, sublet, or mortgaged?**

- (a) An agricultural lease may authorize amendments, assignments, subleases, or mortgages of the leasehold interest, but only with the written consent of the parties to the lease in the same manner the original lease was approved, and our approval. An attempt by the tenant to mortgage the leasehold interest or authorize possession by another party, without the necessary consent and approval, will be treated as a lease violation under § 162.251 of this subpart.
- (b) An agricultural lease may authorize us, one or more of the Indian landowners, or a designated representative of the Indian landowners, to consent to an amendment, assignment, sublease, mortgage, or other type of agreement, on the landowners' behalf. A designated landowner or representative may not negotiate or consent to an amendment, assignment, or sublease that would:
  - (1) Reduce the rentals payable to the other Indian landowners; or
  - (2) Terminate or modify the term of the lease.
- (c) Where the Indian landowners have not designated a representative for the purpose of consenting to an amendment, assignment, sublease, mortgage, or other type of agreement, such consent may be granted by or on behalf of the landowners in the same manner as a new lease, under §§ 162.207 through 162.209 of this subpart.

**§ 162.231 How can the land be used under an agricultural lease?**

- (a) An agricultural lease must describe the authorized uses of the leased premises. Any use of the leased premises for an unauthorized purpose, or a failure by the tenant to maintain continuous operations throughout the lease term, will be treated as a lease violation under § 162.251 of this subpart.
- (b) An agricultural lease must require that farming and grazing operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable tribal laws, leasing policies, or agricultural resource management plans. Appropriate stipulations or conservation plans must be developed and incorporated in all agricultural leases.

**§ 162.232 Can improvements be made under an agricultural lease?**

An agricultural lease must generally describe the type and location of any improvements to be constructed by the lessee. Unless otherwise provided in the lease, any specific plans for the construction of those improvements will not require the consent of the Indian owners or our approval.

**§ 162.233 Who will own the improvements made under an agricultural lease?**

- (a) An agricultural lease may specify who will own any improvements constructed by the tenant, during the lease term. The lease must indicate whether any improvements constructed by the tenant will remain on the leased premises upon the expiration or termination of the lease, providing for the improvements to either:
  - (1) Remain on the leased premises, in a condition satisfactory to the Indian landowners and us; or
  - (2) Be removed within a time period specified in the lease, at the tenant's expense, with the leased premises to be restored as close as possible to their condition prior to construction of such improvements.

- (b) If the lease allows the tenant to remove the improvements, it must also provide the Indian landowners with an option to waive the removal requirement and take possession of the improvements if they are not removed within the specified time period. If the Indian landowners choose not to exercise this option, we will take appropriate enforcement action to ensure removal at the tenant's expense.

**§ 162.234 Must a tenant provide a bond under an agricultural lease?**

Unless otherwise provided by a tribe under § 162.203 of this subpart, or waived by us at the request of the owners of a majority interest in an agricultural lease tract, the tenant must provide a bond to secure:

- (a) The payment of one year's rental;
- (b) The construction of any required improvements;
- (c) The performance of any additional lease obligations, including the payment of operation and maintenance charges under § 162.228(b) of this subpart; and
- (d) The restoration and reclamation of the leased premises, to their condition at the commencement of the lease term or some other specified condition.

**§ 162.235 What form of bond can be accepted under an agricultural lease?**

- (a) Except as provided in paragraph (b) of this section, a bond must be deposited with us and made payable only to us, and such a bond may not be modified or withdrawn without our approval. We will only accept a bond in one of the following forms:
- (1) Cash;
  - (2) Negotiable Treasury securities that:
    - (i) Have a market value at least equal to the bond amount; and
    - (ii) Are accompanied by a statement granting full authority to us to sell such securities in case of a violation of the terms of the lease.
  - (3) Certificates of deposit that indicate on their face that our approval is required prior to redemption by any party;
  - (4) Irrevocable letters of credit issued by federally-insured financial institutions authorized to do business in the United States. A letter of credit must:
    - (i) Contain a clause that grants us the authority to demand immediate payment if the tenant violates the lease or fails to replace the letter of credit at least 30 days prior to its expiration date;
    - (ii) Be payable to us;
    - (iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date of issuance; and
    - (iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides us with written notice that it will not be renewed, at least 90 calendar days before the letter of credit's expiration date.
  - (5) A surety bond issued by a company approved by the U.S. Department of the Treasury; or
  - (6) Any other form of highly liquid, non-volatile security that is easily convertible to cash and for which our approval is required prior to redemption by any party.
- (b) A tribe may accept and hold any form of bond described in paragraph (a) of this section, to secure performance under an agricultural lease of tribal land.



**§ 162.236 How will a cash bond be administered?**

- (a) If a cash bond is submitted, we will retain the funds in an account established in the name of the tenant.
- (b) We will not pay interest on a cash performance bond.
- (c) If the bond is not forfeited under § 162.252(a) of this subpart, we will refund the bond to the tenant upon the expiration or termination of the lease.

**§ 162.237 What insurance is required under an agricultural lease?**

When necessary to protect the interests of the Indian landowners, an agricultural lease must require that a tenant provide insurance. Such insurance may include property, crop, liability and/or casualty insurance. If insurance is required, it must identify both the Indian landowners and the United States as insured parties, and be sufficient to protect all insurable improvements on the leased premises.

**§ 162.238 What indemnities are required under an agricultural lease?**

- (a) An agricultural lease must require that the tenant indemnify and hold the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the tenant's use or occupation of the leased premises, unless:
  - (1) The tenant would be prohibited by law from making such an agreement; or
  - (2) The interests of the Indian landowners are adequately protected by insurance.
- (b) Unless the tenant would be prohibited by law from making such an agreement, an agricultural lease must specifically require that the tenant indemnify the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous materials from the leased premises that occurs during the lease term, regardless of fault.

**§ 162.239 How will payment rights and obligations relating to agricultural land be allocated between the Indian landowners and the tenant?**

- (a) Unless otherwise provided in an agricultural lease, the Indian landowners will be entitled to receive any settlement funds or other payments arising from certain actions that diminish the value of the land or the improvements thereon. Such payments may include (but are not limited to):
  - (1) Insurance proceeds;
  - (2) Trespass damages; and
  - (3) Condemnation awards.
- (b) An agricultural lease may provide for the tenant to assume certain cost share or other payment obligations that have attached to the land through past farming and grazing operations, so long as those obligations are specified in the lease and considered in any determination of fair annual rental made under this subpart.

**§ 162.240 Can an agricultural lease provide for negotiated remedies in the event of a violation?**

- (a) A lease of tribal agricultural land may provide the tribe with certain negotiated remedies in the event of a lease violation, including the power to terminate the lease. An agricultural lease of individually-owned land may provide the individual Indian landowners with similar

remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the landowners.

- (b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 162.252(c) of this subpart. If the lease specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.
- (c) An agricultural lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 162.252 of this subpart.

## **LEASE ADMINISTRATION**

### **§ 162.241 Will administrative fees be charged for actions relating to agricultural leases?**

- (a) We will charge an administrative fee each time we approve an agricultural lease, amendment, assignment, sublease, mortgage, or related document. These fees will be paid by the tenant, assignee, or subtenant, to cover our costs in preparing or processing the documents and administering the lease.
- (b) Except as provided in paragraph (c) of this section, we will charge administrative fees based on the rent payable under the lease. The fee will be 3% of the annual rent payable, including any percentage-based rent that can be reasonably estimated.
- (c) The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00, and any administrative fees that have been paid will be non-refundable. However, we may waive all or part of these administrative fees, in our discretion.
- (d) If all or part of the expenses of the work are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

### **§ 162.242 How will BIA decide whether to approve an amendment to an agricultural lease?**

We will approve an agricultural lease amendment if:

- (a) The required consents have been obtained from the parties to the lease under § 162.230 and any sureties; and
- (b) We find the amendment to be in the best interest of the Indian landowners, under the standards set forth in § 162.213 of this subpart.

### **§ 162.243 How will BIA decide whether to approve an assignment or sublease under an agricultural lease?**

(a) We will approve an assignment or sublease under an agricultural lease if:

- (1) The required consents have been obtained from the parties to the lease under § 162.230 and the tenant's sureties;
  - (2) The tenant is not in violation of the lease;
  - (3) The assignee agrees to be bound by, or the subtenant agrees to be subordinated to, the terms of the lease; and
  - (4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian owners.
- (b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

- (1) The Indian landowners should receive any income derived by the tenant from the assignment or sublease, under the terms of the lease;
- (2) The proposed use by the assignee or subtenant will require an amendment of the lease;
- (3) The value of any part of the leased premises not covered by the assignment or sublease would be adversely affected; and
- (4) The assignee or subtenant has bonded its performance and provided supporting documents that demonstrate that the lease or sublease will be enforceable against the assignee or subtenant, and that the assignee or subtenant will be able to perform its obligations under the lease or sublease.

**§ 162.244 How will BIA decide whether to approve a leasehold mortgage under an agricultural lease?**

- (a) We will approve a leasehold mortgage under an agricultural lease if:
- (1) The required consents have been obtained from the parties to the lease under § 162.230 and the tenant's sureties;
  - (2) The mortgage covers only the tenant's interest in the leased premises, and no unrelated collateral;
  - (3) The loan being secured by the mortgage will be used only in connection with the development or use of the leased premises, and the mortgage does not secure any unrelated debts owed by the tenant to the mortgagee; and
  - (4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.
- (b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:
- (1) The tenant's ability to comply with the lease would be adversely affected by any new loan obligations;
  - (2) Any lease provisions would be modified by the mortgage;
  - (3) The remedies available to us or to the Indian landowners would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee), in the event of a lease violation; and
  - (4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a loan default by the tenant.

**§ 162.245 When will a BIA decision to approve an amendment, assignment, sublease, or mortgage under an agricultural lease be effective?**

Our decision to approve an amendment, assignment, sublease, or mortgage under an agricultural lease will be effective immediately, notwithstanding any appeal that may be filed under part 2 of this chapter. Copies of approved documents will be provided to the party requesting approval, and made available to the Indian landowners upon request.

**§ 162.246 Must an amendment, assignment, sublease, or mortgage approved under an agricultural lease be recorded?**

An amendment, assignment, sublease, or mortgage approved under an agricultural lease must be recorded in our Land Titles and Records Office that has jurisdiction over the leased premises. We will record the document immediately following our approval under this subpart.

**LEASE ENFORCEMENT****§ 162.247 Will BIA notify a tenant when a rent payment is due under an agricultural lease?**

We may issue bills or invoices to a tenant in advance of the dates on which rent payments are due under an agricultural lease, but the tenant's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

**§ 162.248 What will BIA do if rent payments are not made in the time and manner required by an agricultural lease?**

- (a) A tenant's failure to pay rent in the time and manner required by an agricultural lease will be a violation of the lease, and a notice of violation will be issued under § 162.251 of this subpart. If the lease requires that rent payments be made to us, we will send the tenant and its sureties a notice of violation within five business days of the date on which the rent payment was due. If the lease provides for payment directly to the Indian landowners, we will send the tenant and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the landowners.
- (b) If a tenant fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.251(b) of this subpart, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the lease under § 162.252 of this subpart, or invoke any other remedies available under the lease or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the tenant, nor will such an action be precluded by a prior cancellation.
- (c) Partial payments may be accepted by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.
- (d) If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § 162.251 of this subpart. Any payment made to cure such a violation, and any future payments by the same tenant, must be made by one of the alternative payment methods listed in § 162.227(b) of this subpart.

**§ 162.249 Will any special fees be assessed on delinquent rent payments due under an agricultural lease?**

The following special fees will be assessed if rent is not paid in the time and manner required, in addition to any interest or late payment penalties that must be paid to the Indian landowners under an agricultural lease. The following special fees will be assessed to cover administrative costs incurred by the United States in the collection of the debt:

The tenant will pay	* * * For * * *
(a) \$50.00 .....	Administrative fee for dishonored checks.
(b) \$15.00 .....	Administrative fee for BIA processing of each notice or demand letter.

- (c) 18% of balance due.                      Administrative fee charged by Treasury following referral for collection of delinquent debt.

**§ 162.250 How will BIA determine whether the activities of a tenant under an agricultural lease are in compliance with the terms of the lease?**

- (a) Unless an agricultural lease provides otherwise, we may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the tenant is in compliance with the operating requirements of the lease.
- (b) If an Indian landowner notifies us that a specific lease violation has occurred, we will initiate an appropriate investigation within five business days of that notification.

**§ 162.251 What will BIA do in the event of a violation under an agricultural lease?**

- (a) If we determine that an agricultural lease has been violated, we will send the tenant and its sureties a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.
- (b) Within ten business days of the receipt of a notice of violation, the tenant must:
- (1) Cure the violation and notify us in writing that the violation has been cured;
  - (2) Dispute our determination that a violation has occurred and/or explain why we should not cancel the lease; or
  - (3) Request additional time to cure the violation.

**§ 162.252 What will BIA do if a violation of an agricultural lease is not cured within the requisite time period?**

- (a) If the tenant does not cure a violation of an agricultural lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:
- (1) The lease should be canceled by us under paragraph (c) of this section and §§ 162.253 through 162.254 of this subpart;
  - (2) We should invoke any other remedies available to us under the lease, including collecting on any available bond;
  - (3) The Indian landowners wish to invoke any remedies available to them under the lease; or
  - (4) The tenant should be granted additional time in which to cure the violation.
- (b) If we decide to grant a tenant additional time in which to cure a violation, the tenant must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.
- (c) If we decide to cancel the lease, we will send the tenant and its sureties a cancellation letter within five business days of that decision. The cancellation letter must be sent to the tenant by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The cancellation letter will:
- (1) Explain the grounds for cancellation;
  - (2) Notify the tenant of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease;
  - (3) Notify the tenant of its right to appeal under part 2 of this chapter, as modified by § 162.253 of this subpart, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

- (4) Order the tenant to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time.

**§ 162.253 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving agricultural leases?**

- (a) The appeal bond provisions in § 2.5 of part 2 of this chapter will not apply to appeals from lease cancellation decisions made under § 162.252 of this subpart. Instead, when we decide to cancel an agricultural lease, we may require that the tenant post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.
- (b) An appeal bond should be set in an amount necessary to protect the Indian landowners against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the lease cancellation decision.

**§ 162.254 When will a cancellation of an agricultural lease be effective?**

A cancellation decision involving an agricultural lease will not be effective until 30 days after the tenant receives a cancellation letter from us. The cancellation decision will remain ineffective if the tenant files an appeal under § 162.253 of this subpart and part 2 of this chapter, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the tenant must continue to pay rent and comply with the other terms of the lease. If an appeal is not filed in accordance with § 162.253 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the tenant receives the cancellation letter from us.

**§ 162.255 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?**

If a tenant or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of an agricultural lease, we will take appropriate emergency action. Emergency action may include trespass proceedings under part 166, subpart I, of this chapter, or judicial action seeking immediate cessation of the activity resulting in or threatening the harm. Reasonable efforts will be made to notify the Indian landowners, either before or after the emergency action is taken.

**§ 162.256 What will BIA do if a tenant holds over after the expiration or cancellation of an agricultural lease?**

If a tenant remains in possession after the expiration or cancellation of an agricultural lease, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the tenant is engaged in negotiations with the Indian landowners to obtain a new lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, including the assessment of civil penalties and costs under part 166, subpart I, of this chapter.

**Subpart C—Residential Leases [Reserved]**

**Subpart D—Business Leases [Reserved]**

**Subpart E—Special Requirements for Certain Reservations**

**§ 162.500 Crow Reservation.**

- (a) Notwithstanding the regulations in other sections of this part 162, Crow Indians classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended, may lease their trust lands and the trust lands of their minor children for farming or grazing purposes without the approval of the Secretary pursuant to the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). However, at their election Crow Indians classified as competent may authorize the Secretary to lease, or assist in the leasing of such lands, and an appropriate notice of such action shall be made a matter of record. When this prerogative is exercised, the general regulations contained in this part 162 shall be applicable. Approval of the Secretary is required on leases signed by Crow Indians not classified as competent or made on inherited or devised trust lands owned by more than five competent devisees or heirs.
- (b) The Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80), provides that no lease for farming or grazing purposes shall be made for a period longer than five years, except irrigable lands under the Big Horn Canal; which may be leased for periods of ten years. No such lease shall provide the lessee a preference right to future leases which, if exercised, would thereby extend the total period of encumbrance beyond the five or ten years authorized by law.
- (c) All leases entered into by Crow Indians classified as competent, under the above-cited special statutes, must be recorded at the Crow Agency. Such recording shall constitute notice to all persons. Under these special statutes, Crow Indians classified as competent are free to lease their property within certain limitations. The five-year (tenyear in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The essence of this protection is the right to deal with the property free, clear, and unencumbered at intervals at least as frequent as those provided by law. If lessees are able to obtain new leases long before the termination of existing leases, they are in a position to set their own terms. In these circumstances lessees could perpetuate their leaseholds and the protection of the statutory limitations as to terms would be destroyed. Therefore, in implementation of the foregoing interpretation, any lease which, on its face, is in violation of statutory limitations or requirements, and any grazing lease executed more than 12 months, and any farming lease executed more than 18 months, prior to the commencement of the term thereof or any lease which purports to cancel an existing lease with the same lessee as of a future date and take effect upon such cancellation will not be recorded. Under a Crow tribal program, approved by the Department of the Interior, competent Crow Indians may, under certain circumstances, enter into agreements which require that, for a specified term, their leases be approved. Information concerning whether a competent Crow Indian has executed such an instrument is available at the office of the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana. Any lease entered into with a competent Crow Indian during the time such instrument is in effect and which is not in accordance with such instrument will be returned without recordation.
- (d) Where any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition:
  - (1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease;
  - (2) There is, of record, a lease on the land for all or a part of the same term;
  - (3) The lease does not contain stipulations requiring sound land utilization plans and conservation practices; or

- (4) There are other deficiencies such as, but not limited to, erroneous land descriptions, and alterations which are not clearly endorsed by the lessor.
- (e) Any adult Crow Indian classified as competent shall have the full responsibility for obtaining compliance with the terms of any lease made by him pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.
- (f) Leases made by competent Crow Indians shall be subject to the right to issue permits and leases to prospect for, develop, and mine oil, gas, and other minerals, and to grant rights-of-way and easements, in accordance with applicable law and regulations. In the issuance or granting of such permits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of said damage.

**§ 162.501 Fort Belknap Reservation.**

Not to exceed 20,000 acres of allotted and tribal lands (non-irrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding ten years.

**§ 162.502 Cabazon, Augustine, and Torres-Martinez Reservations, California.**

- (a) Upon a determination by the Secretary that the owner or owners are not making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the regulations in this part for the benefit of the owner or owners.
- (b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the county recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leased lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 968).

**§ 162.503 San Xavier and Salt River Pima-Maricopa Reservations.**

- (a) *Purpose and scope.* The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Arizona, in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415). When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in part 162 apply. The purpose of this section is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to leases made for purposes that are subject to the laws governing mining leases on Indian lands.
- (b) *Duration of leases.* Leases made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The terms of a grazing lease shall not exceed ten years; the term of a farming lease that



does not require the making of a substantial investment in the improvement of the land shall not exceed ten years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain an option to renew which extends the total term beyond the maximum term permitted by this section.

- (c) *Required covenant and enforcement thereof.* Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.
- (d) *Notification regarding leasing proposals.* If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.
- (e) *Applicability of other regulations.* The regulations in part 162 of this title shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this section.
- (f) *Mission San Xavier del Bac.* Nothing in the 1966 Act authorizes development that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

## **Subpart F—Non-Agricultural Leases**

### **§ 162.600 What types of leases are covered by this subpart?**

The regulations in this subpart apply to any leases other than agricultural leases, as defined in this part. To the extent that any of the regulations in this subpart conflict with the provisions of the Indian Land Consolidation Act Amendments of 2000, Pub. Law. 106–462, the provisions of that Act will govern.

### **§ 162.601 Grants of leases by Secretary.**

- (a) The Secretary may grant leases on individually owned land on behalf of:
  - (1) Persons who are non compos mentis;
  - (2) Orphaned minors;
  - (3) The undetermined heirs of a decedent's estate;
  - (4) The heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and
  - (5) Indians who have given the Secretary written authority to execute leases on their behalf.
- (b) The Secretary may grant leases on the individually owned land of an adult Indian whose whereabouts is unknown, on such terms as are necessary to protect and preserve such property.
- (c) The Secretary may grant permits on Government land.

**§ 162.602 Grants of leases by owners or their representatives.**

The following may grant leases:

- (a) Adults, other than those non compos mentis,
- (b) Adults, other than those non compos mentis, on behalf of their minor children, and on behalf of minor children to whom they stand in loco parentis when such children do not have a legal representative,
- (c) The guardian, conservator or other fiduciary, appointed by a state court or by a tribal court operating under an approved constitution or law and order code, of a minor or persons who are non compos mentis or are otherwise under legal disability,
- (d) Tribes or tribal corporations acting through their appropriate officials.

**§ 162.603 Use of land of minors.**

The natural or legal guardian, or other person standing in loco parentis of minor children who have the care and custody of such children may use the individually owned land of such children during the period of minority without charge for the use of the land if such use will enable such person to engage in a business or other enterprise which will be beneficial to such minor children.

**§ 162.604 Special requirements and provisions.**

- (a) All leases made pursuant to the regulations in this part shall be in the form approved by the Secretary and subject to his written approval.
- (b) Except as otherwise provided in this part no lease shall be approved or granted at less than the present fair annual rental.
  - (1) An adult Indian owner of trust or restricted land may lease his land for religious, educational, recreational or other public purposes to religious organizations or to agencies of the federal, state or local government at a nominal rental. Such adult Indian may lease land to members of his immediate family with or without rental consideration.
  - (2) In the discretion of the Secretary, tribal land may be leased at a nominal rental for religious, educational, recreational, or other public purposes to religious organizations or to agencies of federal, state, or local governments; for purposes of subsidization for the benefit of the tribe; and for homesite purposes to tribal members provided the land is not commercial or industrial in character.
  - (3) Leases may be granted or approved by the Secretary at less than the fair annual rental when in his judgment such action would be in the best interest of the landowners.
- (c) Unless otherwise provided by the Secretary a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:
  - (1) Not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance.
  - (2) The estimated construction cost of any improvement to be placed on the land by the lessee.
  - (3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.
- (d) The lessee may be required to provide insurance in an amount adequate to protect any improvements on the leased premises; the lessee may also be required to furnish appropriate liability insurance, and such other insurance as may be necessary to protect the lessor's interest.

- (e) No lease shall provide the lessee a preference right to future leases nor shall any lease contain provisions for renewal, except as otherwise provided in this part. No lease shall be entered into more than 12 months prior to the commencement of the term of the lease. Except with the approval of the Secretary no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. The lease contract shall contain provisions as to the dates rents shall become due and payable.
- (f) Leases granted or approved under this part shall contain provisions as to whether payment of rentals is to be made direct to the owner of the land or his representative or to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.
- (g) All leases issued under this part shall contain the following provisions:
  - (1) While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the owner of the land.
  - (2) Nothing contained in this lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land.
  - (3) The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.
- (h) Leases granted or approved under this part on individually owned lands which provide for payment of rental direct to the owner or his representative shall contain the following provisions:
  - (1) In the event of the death of the owner during the term of this lease and while the leased premises are in trust or restricted status, all rentals remaining due or payable to the decedent or his representative under the provisions of the lease shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.
  - (2) While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

**§ 162.605 Negotiation of leases.**

- (a) Leases of individually owned land or tribal land may be negotiated by those owners or their representatives who may execute leases pursuant to § 162.602 of this subpart.
- (b) Where the owners of a majority interest, or their representatives, who may grant leases under § 162.602 of this subpart, have negotiated a lease satisfactory to the Secretary he may join in the execution of the lease and thereby commit the interests of those persons in whose behalf he is authorized to grant leases under § 162.601(a)(1), (2), (3), and (5) of this subpart.
- (c) Where the Secretary may grant leases under § 162.601 of this subpart he may negotiate leases when in his judgment the fair annual rental can thus be obtained.

**§ 162.606 Advertisement.**

Except as otherwise provided in this part, prior to granting a lease or permit as authorized under § 162.601 of this subpart the Secretary shall advertise the land for lease. Advertisements will call for sealed bids and will not offer preference rights.

**§ 162.607 Duration of leases.**

Leases granted or approved under this part shall be limited to the minimum duration, commensurate with the purpose of the lease, that will allow the highest economic return to the owner consistent with prudent management and conservation practices, and except as otherwise provided in this part shall not exceed the number of years provided for in this section. Except for those leases authorized by § 162.604(b)(1) and (2) of this subpart, unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the contract or the contribution value of such improvements. Any adjustments of rental resulting from such review may be made by the Secretary where he has the authority to grant leases, otherwise the adjustment must be made with the written concurrence of the owners and the approval of the Secretary.

- (a) Leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25 years, except such leases of land on the Hollywood (formerly Dania) Reservation, Fla.; the Navajo Reservation, Ariz., N. Mex., and Utah; the Palm Springs Reservation, Calif.; the Southern Ute Reservation, Colo.; the Fort Mohave Reservation, Calif., Ariz., and Nev.; the Pyramid Lake Reservation, Nev.; the Gila River Reservation, Ariz.; the San Carlos Apache Reservation, Ariz.; the Spokane Reservation, Wash.; the Hualapai Reservation, Ariz.; the Swinomish Reservation, Wash.; the Pueblos of Cochiti, Pojoaque, Tesuque, and Zuni, N. Mex.; and land on the Colorado River Reservation, Ariz., and Calif.; which leases may be made for terms of not to exceed 99 years.
- (b) Leases granted by the Secretary pursuant to § 162.601(a)(3) of this subpart shall be for a term of not to exceed two years except as otherwise provided in § 162.605(b) of this subpart.

**§ 162.608 Ownership of improvements.**

Improvements placed on the leased land shall become the property of the lessor unless specifically excepted therefrom under the terms of the lease. The lease shall specify the maximum time allowed for removal of any improvements so excepted.

**§ 162.609 Unitization for leasing.**

Where it appears advantageous to the owners and advantageous to the operation of the land a single lease contract may include more than one parcel of land in separate ownerships, tribal or individual, provided the statutory authorities and other applicable requirements of this part are observed.

**§ 162.610 Subleases and assignments.**

- (a) Except as provided in paragraphs (b), (c), and (d) of this section, a sublease, assignment, amendment or encumbrance of any lease or permit issued under this part only with the approval of the Secretary and the written consent of all parties to such lease or permit, including the surety or sureties.
- (b) With the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the approved lease.

- (c) With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument, must be approved by the Secretary. If a sale or foreclosure under the approved encumbrance occurs and the encumbrancer is the purchaser, he may assign the leasehold without the approval of the Secretary or the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignment will be required, and such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.
- (d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on the leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by foreclosure or otherwise. Such leases may with the consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval.

**§ 162.611 Payment of fees and drainage and irrigation charges.**

- (a) Any lease covering lands within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.
- (b) We will charge an administrative fee each time we approve an agricultural lease, amendment, assignment, sublease, mortgage, or related document. These fees will be paid by the tenant, assignee, or subtenant, to cover our costs in preparing or processing the documents and administering the lease.
- (c) Except as provided in paragraph (d) of this section, we will charge administrative fees based on the rent payable under the lease. The fee will be 3% of the annual rent payable, including any percentage or cropshare rent that can be reasonably estimated.
- (d) The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00, and any administrative fees that have been paid will be non-refundable. However, we may waive all or part of these administrative fees, in our discretion.
- (e) If all or part of the expenses of the work are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

**§ 162.612 Can a lease provide for negotiated remedies in the event of a violation?**

- (a) A lease of tribal land may provide the tribe with certain negotiated remedies in the event of a lease violation, including the power to terminate the lease. A lease of individually-owned land may provide the individual Indian landowners with similar remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the landowners.
- (b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 162.619(c) of this subpart. If the lease

specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.

- (c) A lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 162.619 of this subpart.

**§ 162.613 Will BIA notify a tenant when a rent payment is due under a lease?**

We may issue bills or invoices to a tenant in advance of the dates on which rent payments are due under a lease, but the tenant's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

**§ 162.614 Will untimely rent payments made under a lease be subject to interest charges or late payment penalties?**

A lease must specify the rate at which interest will accrue on any rent payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the tenant from us or the Indian landowners, and the failure to pay such amounts will be treated as a lease violation under § 162.618 of this subpart.

**§ 162.615 What will BIA do if rent payments are not made in the time and manner required by a lease?**

- (a) A tenant's failure to pay rent in the time and manner required by a lease will be a violation of the lease, and a notice of violation will be issued under § 162.618 of this subpart. If the lease requires that rent payments be made to us, we will send the tenant and its sureties a notice of violation within five business days of the date on which the rent payment was due. If the lease provides for payment directly to the Indian landowners, we will send the tenant and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the landowners.
- (b) If a tenant fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.618(b) of this subpart, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the lease under § 162.619 of this subpart, or invoke any other remedies available under the lease or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the tenant, nor will such an action be precluded by a prior cancellation.
- (c) Partial payments and underpayments may be accepted by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.
- (d) If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § 162.618 of this subpart. Any payment made

to cure such a violation, and any future payments by the same tenant, must be made by an alternative payment method approved by us.

**§ 162.616 Will any special fees be assessed on delinquent rent payments due under a lease?**

The following special fees will be assessed if rent is not paid in the time and manner required, in addition to any interest or late payment penalties that must be paid to the Indian landowners under a lease. The following special fees will be assessed to cover administrative costs incurred by the United States in the collection of the debt:

The tenant will pay \* \* \* For \* \* \*

- (a) \$50.00 ..... Administrative fee for dishonored checks.
- (b) \$15.00 ..... Administrative fee for BIA processing of each notice or demand letter.
- (c) 18% of balance due....Administrative fee charged by Treasury following referral for collection of delinquent debt.

**§ 162.617 How will BIA determine whether the activities of a tenant under a lease are in compliance with the terms of the lease?**

- (a) Unless a lease provides otherwise, we may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the tenant is in compliance with the operating requirements of the lease.
- (b) If an Indian landowner notifies us that a specific lease violation has occurred, we will initiate an appropriate investigation within five business days of that notification.

**§ 162.618 What will BIA do in the event of a violation under a lease?**

- (a) If we determine that a lease has been violated, we will send the tenant and its sureties a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.
- (b) Within ten business days of the receipt of a notice of violation, the tenant must:
  - (1) Cure the violation and notify us in writing that the violation has been cured;
  - (2) Dispute our determination that a violation has occurred and/or explain why we should not cancel the lease; or
  - (3) Request additional time to cure the violation.

**§ 162.619 What will BIA do if a violation of a lease is not cured within the requisite time period?**

- (a) If the tenant does not cure a violation of a lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:
  - (1) The lease should be canceled by us under paragraph (c) of this section and §§ 162.620 through 162.621 of this subpart;
  - (2) We should invoke any other remedies available to us under the lease, including collecting on any available bond;
  - (3) The Indian landowners wish to invoke any remedies available to them under the lease; or
  - (4) The tenant should be granted additional time in which to cure the violation.
- (b) If we decide to grant a tenant additional time in which to cure a violation, the tenant must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.
- (c) If we decide to cancel the lease, we will send the tenant and its sureties a cancellation letter within five business days of that decision. The cancellation letter must be sent to the tenant

by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The cancellation letter will:

- (1) Explain the grounds for cancellation;
- (2) Notify the tenant of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease;
- (3) Notify the tenant of its right to appeal under part 2 of this chapter, as modified by § 162.620 of this subpart, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and
- (4) Order the tenant to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time.

**§ 162.620 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving leases?**

- (a) The appeal bond provisions in § 2.5 of part 2 of this chapter will not apply to appeals from lease cancellation decisions made under § 162.619 of this subpart. Instead, when we decide to cancel an agricultural lease, we may require that the tenant post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.
- (b) An appeal bond should be set in an amount necessary to protect the Indian landowners against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the lease cancellation decision.

**§ 162.621 When will a cancellation of a lease be effective?**

A cancellation decision involving an agricultural lease will not be effective until 30 days after the tenant receives a cancellation letter from us. The cancellation decision will remain ineffective if the tenant files an appeal under § 162.620 of this subpart and part 2 of this chapter, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the tenant must continue to pay rent and comply with the other terms of the lease. If an appeal is not filed in accordance with § 162.620 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the tenant receives the cancellation letter from us.

**§ 162.622 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?**

If a tenant or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of a lease, we will take appropriate emergency action. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm. Reasonable efforts will be made to notify the Indian landowners, either before or after the emergency action is taken.

**§ 162.623 What will BIA do if a tenant holds over after the expiration or cancellation of a lease?**

If a tenant remains in possession after the expiration or cancellation of a lease, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the tenant is engaged in negotiations with the Indian landowners to obtain a new lease, we will take action to recover



possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law.

## Exhibit 5

# How to Read a Land Description

## HOW TO READ A LAND DESCRIPTION

The present rectangular survey system for surveying public lands began in 1785 when a beginning point was established at the west boundary of Pennsylvania where it crosses the north bank of the Ohio River under the Articles of Confederation. All States in the Union, except the thirteen original colonies, and Kentucky, Maine, Vermont, West Virginia, Tennessee, and Texas are covered by the rectangular survey system. The rectangular system is now used in 30 states. The purpose of this system was to provide a means of land identification and legal descriptions pursuant to laws and ordinances. Initial points were established that have become the origin for surveys in each of these 30 states.

### INITIAL POINT - PRINCIPAL MERIDIAN - BASE LINE

The control point for the entire rectangular survey system is developed around the initial point. The initial point is the intersection of a north-south line (true north, not magnetic north) and east-west line (that parallels latitude). The north-south line is called the Principal Meridian and the horizontal east-west line is called the Base Line.

### TOWNSHIP LINE - RANGE LINE - SECTION

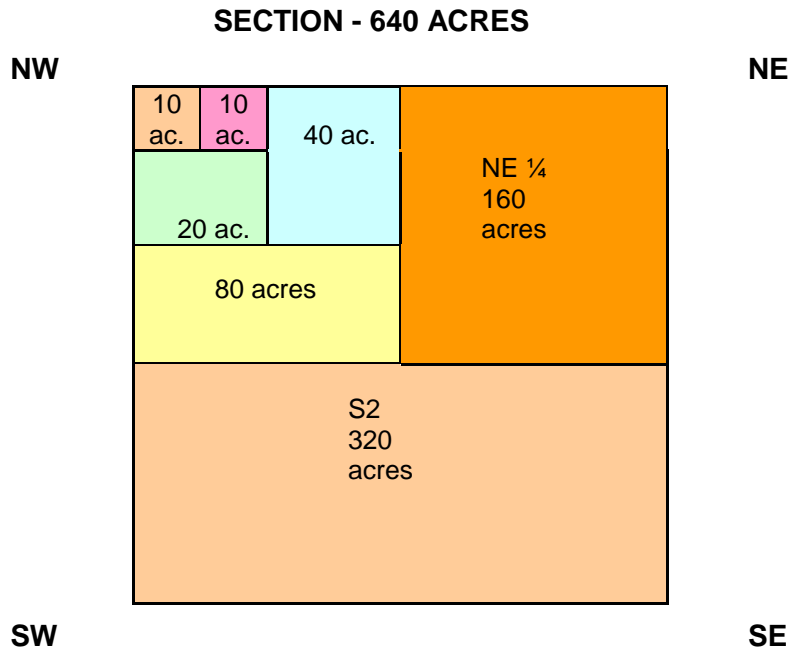
Within the rectangular survey system, Township lines are established at intervals of six miles to the north and south of the Base Line. Accordingly, Range lines are established at intervals of six miles to the east and west of the Principal Meridian creating a six mile square also called a Township. In each Township there are 36 sections of approximately one square mile in area. These sections are always numbered consecutively beginning in the northeast corner as follows:

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Each section contains approximately 640 acres of land. This figure is important to remember since it is the basis of describing aliquot parts in a section.

### ALIQOT PART

A section can be divided into two more parts using an aliquot part description. To divide the section in two, the result would be two 320 acre tracts creating 2 half sections. These sections are referred to as the north half or the south half or the east half or the west half. Each portion could then again be divided into two 160 acre tracts creating quarter sections and so on. The whole section may be divided into thirds or fifths or any other equal part. The following is a schematic diagram of a section divided into aliquot parts the numbers show the amount of acres represented:



### READING AND WRITING ALIQUOT PARTS

The only fractions that appear in an aliquot parts description of land are  $\frac{1}{2}$  and  $\frac{1}{4}$ . The west half of a section is  $W\frac{1}{2}$ . The same rule applies to the east half -  $E\frac{1}{2}$ , the north half -  $N\frac{1}{2}$ , and the south half -  $S\frac{1}{2}$ . To describe the quarter-sections it is necessary to add an east or west notation, i.e.  $SW\frac{1}{4}$  would read: Southwest  $\frac{1}{4}$ . All subsequent halves or quarters are shown by adding one complete notation, i.e.  $SW\frac{1}{4}SE\frac{1}{4}$ . It is extremely important to note that commas are used in the legal description to distinguish between descriptions. A comma in a description is read as "AND", whereas absence of a comma means "of the". For example:

$SW\frac{1}{4}SE\frac{1}{4}$  reads aloud as "SW quarter of the SE quarter".

$SW\frac{1}{4}, SE\frac{1}{4}$  reads aloud as "SW quarter and the SE quarter."

In the sample section above, the following describes each tract:

ACRES	DESCRIBED AS	ALIQUOT PART
320	is	$S\frac{1}{2}$
160	is	$NE\frac{1}{4}$
80	is	$S\frac{1}{2}NW\frac{1}{4}$
40	is	$NW\frac{1}{4}NE\frac{1}{4}$
20	is	$S\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$
10	is	$NW\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$ or $NE\frac{1}{4}NW\frac{1}{4}NW\frac{1}{4}$

The correct use of a comma or its omission is imperative and placement is misleading when reading the description. In all situations the comma or its omission in a legal description will cause problems with the actual legal title and its encumbrances. An excellent example is:

SW1/4, NE1/4	-	describes 320 acres
SW1/4NE1/4	-	describes 40 acres

To read a legal description you begin with the smallest portion and proceed to the largest. For example:

Without aliquot parts - Sec. 26, T. 6 S., R. 6 W., PM reads as:

Section 26, Township 6 South, Range 6 West, Principal Meridian

With aliquot parts - W1/2NW1/4NE1/4, Sec. 26, T. 6 S., R. 6 W., PM reads as:

west half of the northwest quarter of the northeast quarter, Section 26,  
Township 6 South, Range 6 West, Principal Meridian

### **FRACTIONAL LOTS**

Fractional lots are irregular tracts of land within a section that cannot be described by aliquot parts. They are generally located on the north or west sides of a township or adjacent to lakes, ponds, or rivers that cover a part of a section.

## Exhibit 6

# Mandatory and Optional Lease Provisions

## LEASE PROVISIONS - MANDATORY AND OPTIONAL

### Mandatory Lease Provisions

There are certain provisions, also called stipulations, which are required for all leases. These provisions have been developed in order to maintain the integrity of the land on behalf of the landowners and uphold the Bureau's trust responsibilities. In addition to the required provisions listed below, other mandatory provisions may be included depending on the lease type and will be discussed in the relevant chapter of the handbook.

- **APPROVAL** - It is understood and agreed that this lease shall be valid and binding only after approval by the Secretary.
- **ARCHEOLOGICAL CLEARANCES** - In the event that archeological or historical remains, burials, cultural artifacts, or other antiquities not previously reported are encountered during the course of construction, farming, ranching, or any other activities associated with this contract, all activity in the immediate vicinity of the remains or artifacts will cease and BIA approving official will be contacted to determine disposition.
- **ASSENT NOT WAIVER OF FUTURE BREACH OF COVENANTS** - No assent, expressed or implied, to the breach of any of the lessee's covenants shall be deemed to be a waiver of any succeeding breach of covenants.
- **CARE OF PREMISES** - It is understood and agreed that the lessee is to keep the premises covered by this lease in good repair. He/She shall not commit or permit to be committed any waste whatever on said premises and shall not remove or tear down any building or other improvement thereon, but shall keep the same in good repair. He/She shall not destroy or permit to be destroyed any trees, except with the consent of the landowner(s) and the approval of the Secretary, and shall not allow the premises to become unsightly. The lessee will be held financially responsible for all unrepaired damages to buildings, fences, improvements or appearance, except for the usual wear and decay.
- **ENTRY ON PREMISES** - BIA approving official, his/her representative, or the lessor may enter upon the premises covered by this contract at such reasonable times as may be desired for inspection or for the purpose of exercising any of the rights reserved under this contract. Whenever locks are placed on gates, keys must be furnished to BIA approving official.
- **IMPROVEMENTS** - Unless otherwise specifically provided herein, it is understood and agreed that any buildings or other improvements placed upon the said land by the lessee become the property of the landowner(s) if not removed by the lessee within thirty (30) days of the termination or expiration of the lease.
- **INDEMNITY** - The lessee agrees to indemnify and hold the United States and the Indian landowner(s) harmless from loss, liability or damages resulting from the lessee's use or occupation of the lease premises. The lessee also agrees to indemnify the United States and the Indian landowner(s) against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation or disposal of hazardous materials, or the release or

discharge of any hazardous materials, from the leased premises that occurs during the lease term, regardless of fault, unless (1) the lessee would be prohibited by law from making such an agreement; or (2) the interests of the Indian landowner(s) are adequately protected by insurance.

- **INTEREST OF MEMBER OF CONGRESS** - No Member or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise here from; but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.
- **LATE PAYMENT PENALTY** - It is understood and agreed between the parties hereto that in the event that any annual or semi annual installment of rental is not paid after becoming due, a penalty equal to \_\_\_% of the amount unpaid will be assessed every 30 days that the amount remains unpaid; or in the event that any installment of rental for a period other than annual or semi annual is not paid after becoming due, a penalty equal to \_\_\_% of the amount unpaid will be assessed every month that the amount remains unpaid.
- **RELINQUISHMENT OF SUPERVISION BY THE SECRETARY** - Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The landowner(s) and the lessee and his/her surety or sureties shall be notified by the Secretary of any such change in the status of the land.
- **RESERVATIONS** - It is understood and agreed that the landowner reserves the right to make mineral, business, signboard, industrial and sand and gravel leases and/or permits, and to grant rights-of-way and other legal grants on the premises covered by this lease, and that in the event such a lease or grant is made, the lessee hereunder shall be entitled to damages for the actual loss sustained by him on account of said lease or grant, and to nothing more.
- **“SECRETARY”** - As used herein, means the Secretary of the Interior or his/her authorized representative acting under delegated authority.
- **SUBLEASES AND ASSIGNMENTS** - Unless otherwise provided herein, a sublease, assignment or amendment of this lease may be made only with the approval of the Secretary and the written consent of the parties to the lease in the same manner the original lease was approved.
- **UNLAWFUL CONDUCT** - The lessee agrees that he/she will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.
- **UPON WHOM BINDING** - It is understood and agreed that the covenants and agreements herein before mentioned shall extend to and be binding upon the heirs, assigns, executors and administrators of the parties to this lease. While the leased premises are in trust or restricted status, all the lessee's obligations under this lease, and the obligations of its sureties, are to the United States, as well as to the landowner(s).



- **VIOLATIONS OF LEASE** - It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations of the Secretary as stated in 25 CFR 162.

### **Optional General Lease Provisions**

Optional general lease provisions may apply depending on the land use proposed and the local circumstances. The Regional Office may have a number of these provisions required for leases in certain cases or for certain practices and may prescribe policies regarding their use. Please review any supplemental guidance or refer to the Regional Addendum to the Leasing Handbook for further information. These optional standard lease provisions may include:

- **ADDENDA** - Prior to execution of this lease, provisions numbered xxx have been added hereto and by reference are made a part hereof.
- **CONSENTS, REASONABLENESS, GOOD FAITH** - No delay or omission to exercise any right, power, or remedy accruing under this lease shall impair such right, power, or remedy, nor shall it be construed as a waiver of or acquiescence in a breach of or default under the lease. Both parties specifically and affirmatively agree not to construe the conduct, delay, or omission of the other party as altering in any way the parties' agreements as defined in this lease. Any waiver, permit, or approval of any breach of or default under this lease must be in writing, and, because the language of this section was negotiated and intended by both parties to be binding and is not a mere recital, both parties hereby agree that they will not raise waiver or estoppels as affirmative defenses so as to limit or negate the clear language and intent of this section. All remedies, either under this lease, by law or otherwise afforded to either Party shall be cumulative, not alternative.
- **DAMAGE TO INDIAN LAND AND PROPERTY** - The lessee will be liable and will be required to repair or make reimbursement for any damage that may be done to the premises, livestock, or property of Indians through the acts of the lessee, their employees, equipment, or livestock.
- **DELIVERY OF PREMISES** - At the termination of this lease, lessee will peaceably and without legal process, deliver up the possession of the leased premises reclaimed in accordance with law.
- **DESTRUCTION OF SURVEY MONUMENTS** - All survey monuments, witness corners, reference monuments, and bearing trees must be protected against destruction, obliteration, or damage. Any damage or obliterated markers must be reestablished in accordance with accepted survey practices at the lessee's expense including applicable penalties.
- **DUMPING REFUSE** - The placing or dumping of junk, trash or carrion, rocks or other rubbish or waste is prohibited. Liquidated damages: \$\_\_\_ per 100 square feet or actual cost of cleanup, whichever is greater.
- **ENVIRONMENTAL COMPLIANCE** - BIA approving official will ensure compliance with various environmental and cultural resource laws, regulations, and Executive and Secretarial Orders. Furthermore, BIA approving official will ensure that the lessee implement

all required mitigation measures and/or design features. The lessee shall keep and maintain all of the buildings and installations erected upon the premises and the areas around said buildings and installations in a condition that conforms to the sanitary regulations of the U.S. Public Health Service, State, County, and Tribe. The lessee will take whatever mitigation measures required by the Secretary, EPA, or Tribal EPA Office, to reduce or eliminate the harmful effects from the creation of pollution.

- **HOLDING OVER** - Holding over by the lessee after the termination of this contract shall not constitute a renewal or extension hereof or give the lessee any rights hereunder to or in the premises.
- **HOMESTEADS** - The use of homestead areas designated on the tract are not conveyed by this contract. The lessee shall take reasonable measures to protect homestead areas and shelterbelts against damage from trespass, livestock, fire, and chemical sprays. When homesteads are unoccupied the lessee shall be responsible for the maintenance of the exterior fences. Also see the Surrender Clause for home site leases/permits.
- **HUNTING AND FISHING** - This contract does not provide the privilege of hunting or fishing or any other type of recreation. However, this lease does not allow the lessee to restrict or infringe upon the vested hunting and fishing rights of the Indian people of the reservation. Hunting and fishing on the leased premises are subject to applicable treaties and tribal fish and game codes.
- **INTERPRETATION OF STIPULATIONS** - The final interpretation of these stipulations shall rest with the Secretary of the Interior.
- **PROTECTION OF FISH AND WILDLIFE** - The lessee must comply with the Federal, State, and Tribal fish, game, and wildlife protection laws and regulations that apply to the reservation.
- **PESTICIDE/HERBICIDE/INSECTICIDE/FUNGICIDE USE** - A Pesticide Use Proposal (PUP) approved by BIA approving official is required before any pesticide, herbicide, insecticide, or fungicide can be used on Trust property in this contract. In addition, a Pesticide Application Record (PAR) or daily logbook should be kept and provided to BIA approving official annually. Restricted use pesticides can only be applied by certified applicators. No soil sterilizing, or other chemicals with prolonged effect on the soil or adverse effect on the environment may be used. During the last year of the contract the lessee will not use any pesticide or herbicide that will have a residual effect (carry-over effect) that may harm any crop planted at a later date.
- **PROPERTY INSURANCE** - The lessee shall carry insurance against direct loss or damage, consequential loss, loss due to liability for damages, or loss due to dishonesty or failure of others to perform their duty. Said policy shall provide for notification to lessor and the Secretary prior to any cancellation of said policy for any reason including non-payment of premiums.

- **PUBLIC LIABILITY INSURANCE** - At all times during the term of this contract, the lessee shall carry a public liability insurance policy in the amount of \$\_\_\_\_ for personal injury resulting from one incident and \$\_\_\_\_\_ for property damage resulting from one incident. Said policy shall be written to jointly protect the lessee, lessor(s), and the United States and shall provide for notification to lessor and the Secretary prior to any cancellation of said policy for any reason including non-payment of premiums.
- **RESERVED RIGHTS** - (1) The lessor(s) reserves to themselves the right to gather all native nuts and fruits and other culturally significant products, and the right to engage in lawful hunting and fishing, provided that such activities do not interfere with the normal farming or grazing operations. (2) The lessor(s) reserves the right to all water except that required for livestock and domestic purposes. (3) Timber and woodlands, and timber and woodland products are reserved by the lessor(s). (4) Cemeteries or burial plots on the premises shall not be cultivated or grazed.
- **SEISMOGRAPHIC EXPLORATION** - The lessee shall not prohibit entry by a seismograph company nor be entitled to payment except for actual damages that may be sustained resulting from such seismograph work as specified in the contract.
- **SURRENDER CLAUSE** - (1) It is understood and agreed that in the last year of the lease, the outgoing lessee will surrender without cost, upon written request or 90 days prior to the expiration date of the contract, to the lessor, succeeding lessee, or purchaser all small grain stubble cropland in suitable condition for seedbed preparation for seeding of fall crops. The outgoing lessee will also surrender right of ingress/egress for the above purpose. Furthermore, it shall be the responsibility of both the outgoing and succeeding lessees to confine their respective operations and livestock to only that portion of the tract to which they are entitled. In no case shall either interfere with the operation of the other. (2) It is understood that the lessee agrees to surrender a portion of the leased premises for home site purposes along with the necessary access provided: a) suitable soils are available for building sites, b) the home site location does not adversely affect the ranching/farming operation, c) the site complies with established zoning ordinances, d) the prospective home site lessee has obtained the required landowner's consent prior to lease expiration, and e) the site is approved following the appropriate archeological clearance. An appropriate rental adjustment will be made for acreages surrendered for home site purposes.

The following provisions only apply to agricultural leases:

## STANDARD OPTIONAL AGRICULTURAL LEASE PROVISIONS

- **AFFIDAVIT OF LANDUSER** – The lessee may be required by BIA approving official to execute an affidavit showing the number of livestock by class and kind grazed under the permit.
- **AFTERMATH GRAZING** – No residue consisting of volunteer grains, weeds, small grains and legume straw or other surface crop residue will be allowed to be grazed, baled for hay or straw or removed on cropland designations in this lease, unless the remaining surface residue is determined to be in excess of local Natural Resources Conservation Service surface crop residue management practices. Such practices are used to facilitate reducing erosion and improving soil quality. Activation of this provision shall require an approved cropping plan and the landowners shall be entitled to compensation before grazing and/or removal of excessive surface residue. The liquidated damages for unauthorized grazing is \$\_\_\_ per acre and the liquidated damages for forage removal is \$\_\_\_ per acre plus the value of the forage removed. In the event aftermath grazing is approved only livestock bearing the registered brands of the lessee(s) will be authorized on the lands under this contract, unless other arrangements are approved by the landowners and BIA.
- **ANNUAL CROP REPORTS** – Acreage and yields for crops, hay, and grazing will be submitted to BIA Agency annually.
- **BRANDING OF LIVESTOCK** – All livestock authorized to graze upon or trail over restricted Indian land must be marked with a brand or mark issued and recorded by an appropriate state agency or filed with BIA approving official.
- **BREAKING OF SOD** – Unless specifically granted in the provisions of this contract, breaking of sod/soil or any other land-use conversion is prohibited. Furthermore, the lessee shall not break any sod/soil unless indicated as cropland without permission from the Secretary. The full acreage broken in violation (including areas designated as waterways) shall be reseeded to an approved grass or grass/legume mixture by the lessee in accordance with instructions of the Secretary. Liquidated damages: \$\_\_\_ per acre for each acre broken from sod/soil without permission plus \$\_\_\_ per acre for each acre not properly reestablished to permanent vegetation. Topsoil, grass sprigs, or sod shall not be removed or sold from the premises under any circumstance.
- **CONDITION OF CAMPS** – Facilities used for livestock management camps must be kept in a clean and sanitary condition. All rubbish, tin, etc, must be removed or disposed of according to local or tribal ordinances.
- **COUNTING OF LIVESTOCK** – All livestock authorized to graze upon or trail over restricted Indian land must be counted by BIA approving official or their representative. Arrangements should be made for counting all livestock before they enter the range unit.

Lessees are required to notify BIA approving official sufficiently in advance to have a BIA representative present when stock are counted on or off the reservation. The right is reserved by BIA to have a representative present at each roundup to check the number of stock. In the event that the lessee shall fail or refuse to round up his stock at proper times and in a satisfactory manner for the purpose of allowing a count of the stock, BIA approving official shall have the right to round up and count said stock at the expense of the lessee.

- **CROP INSURANCE** – In the case of crop-share leases, the lessee must provide proof of annual crop insurance coverage to BIA at least two weeks prior to the sign-up deadline for crop insurance. The crop insurance will cover the lessee's and landowner's share of the crop. Failure to provide proof of insurance will result in cancellation of the contract with the existing crop becoming the property of the landowner(s).
- **CROP LEASES** – It is understood and agreed that the lessee will not purchase or be party to the purchase by anyone of the landowner's share of the crop, without the prior approval of the Secretary.
- **CROP MORTGAGE** – The lessee may mortgage, annually, any or all crops grown on the premises for the purpose of securing crop financing, provided that the lessee shall have paid the annual rentals due the landowner(s) prior to any such mortgage. The lessee(s) and the Secretary shall be held harmless as a result of any such mortgage or any other acts of the lessee under this lease.
- **CROP PROTECTION** – The lessee shall take and provide whatever lawful measures are necessary to protect crops from trespass or damage by livestock.
- **CROP ROTATION** – Crop rotations will be practiced which promote continued productivity through control of weeds, insects, and crop diseases as well as maintenance of soil fertility. Soil depleting crops shall not be grown more than three consecutive years, including years prior to the beginning of the contract, with rotation of soil building crops. Unless land is in a fallow cropping system, a cover crop will be planted and maintained on idle lands for the purpose of preventing soil erosion.
- **CROP SHARE** – Planted crops and hay meadows shall not be pastured under a crop share lease unless specifically provided for in this lease. The lessee will not purchase or be a party to the purchase by anyone of the lessor's share of the crop without prior approval of the Secretary.
- **CROSSING PERMITS** – The driving of livestock by a lessee across restricted Indian land not covered by their grazing permit must be authorized by a crossing permit approved by BIA approving official. The right is hereby reserved for BIA approving official to issue crossing permits over any range unit and to supervise the movement of livestock so authorized.
- **DISPOSITION OF LIVESTOCK CARCASSES** – The lessee will promptly bury or burn the carcasses of all animals that die upon lands covered by their grazing permit.

- **ENTERING THE RANGE** – The earliest date upon which stock will be permitted to enter the range will be the date shown in the permit. Notice must be given to BIA approving official prior to entering the reservation. On reservations where permanent driveways have been established all livestock will be required to enter or leave the reservation on the particular driveway designated by BIA. Except where livestock are transported over or trailed over established rights-of-way, the route to be followed will be designated by BIA.
- **EXCESS OR DEFICIT OF THE NUMBER OF STOCK SPECIFIED** – Unless the number of livestock specified in the permit is reduced by BIA, the lessee will not be allowed credit or rebate in case the full number is not grazed on the range unit. However, if the number of livestock authorized is exceeded, the lessee shall be liable to pay liquidated damages according to 25 CFR 166, and such livestock shall be promptly removed from the unit.
- **FALLOW OPERATIONS** – A system of alternate fallow and crop shall be followed on all dry cropland. No dry cropland is to be cropped two years in succession except with the approval of the Secretary. On fields under a system of strip cropping, field strips shall be rotated so the 50% of the cropland will be in summer fallow each year with crop strips and fallow strips alternating. Fallow operations must be timely with initial operations completed no later than (fill-in date) of each year. The number of operations must be sufficient to keep the fallow areas weed free and yet maintain the acceptable level of crop residue. Liquidated damages: \$\_\_\_ per acre of improperly managed fallow.
- **FORAGE MANAGEMENT** – The lessee shall practice proper grazing or forage management on all grazing land (rangeland, native pasture, improved pasture) covered by this contract and conservation plan. This will be accomplished through proper forage harvesting, livestock distribution, stocking rates, season of use, and weed control. Any change in stocking rate or season of use must be approved by the landowner(s) and BIA. If cropland is included in this lease, the proper amount of crop residue will remain after grazing in accordance with local Natural Resources Conservation Service standards for protection from erosion, improvement of tilth, and retention of soil moisture. (Liquidated damages: \$\_\_\_ per acre plus deferment as required to improve conditions of grazing land.)
- **HANDLING OF SHEEP** – The open-herding system of handling sheep should be used on all ranges where applicable. The principal points in this system are: (a) Herding in the lead of sheep instead of in the rear, and training them to spread out and graze quietly. (b) Grazing rather than driving when going to and from water. (c) Bedding down the sheep on fresh bed grounds where night overtakes them and, where possible, at least one-fourth mile from a running stream, spring, or other water. (d) Camping close to the sheep each night by the herder packing along his food and bedding or servicing the herder's outfit from a central camp. (e) Using dogs as little as possible after the sheep are properly trained and keeping dogs principally to protect the flock from predatory animals. (f) Ewes with lambs will invariably graze around the bed ground before leaving. For this reason ewes and lambs should never be camped twice in the same place if avoidable.
- **INTERNAL IRRIGATION SYSTEM** – When an irrigation system is available on a tract the lessee is responsible for all upkeep and maintenance. The lessee shall maintain all steel

turnout gates and other control structures throughout the lease term and shall leave them in good working condition at the termination of the lease. The lessee shall replace any metal slides, pipes, or gates that are so worn or corroded as to be unusable as often as necessary throughout the lease term or at the termination thereof. All irrigation and drainage repairs or modifications of improvements shall be reviewed and approved by BIA approving official prior to work commencing. If requested by BIA, the lessee will install at the lessee's expense, a water measuring device for each turnout meeting standards specified by BIA. Concrete or clay lined irrigation ditches shall not be used for watering livestock.

- **LIVESTOCK DISEASE CONTROL** – All livestock covered by grazing and/or crossing permits are subject to the quarantine laws and regulations now in force or hereafter to be promulgated by the United States, the State in which the reservation is situated, and by the tribal governing body.
- **MANAGEMENT OF IRRIGATED LAND** – Irrigation water heads of a size to cause soil erosion will not be used. Irrigated lands will be managed to reduce the buildup of harmful salts through proper leaching and will be managed to prevent water logging and excessive tail water drainage. Drainage of tail water will be controlled to avoid washing, ponding, and flooding of the field or adjacent lands. Fields will be leveled to a grade approved by the Secretary in writing prior to commencing of leveling.
- **MOVEMENT OF LIVESTOCK** – BIA approving official reserves the right to direct the movement of livestock whenever he/she deems it necessary for the proper protection and utilization of the range. The following acts are prohibited: (a) The grazing upon or driving across any restricted Indian lands of any livestock without an approved grazing or crossing permit, except such Indian livestock may be exempted from permit, (b) Allowing livestock not exempt from permit to drift and graze on restricted Indian lands without an approved permit, (c) The grazing of livestock upon restricted Indian lands within an area closed to grazing of that class of livestock, (d) The grazing of livestock by a lessee upon an area of restricted Indian lands withdrawn from use for purposes to protect it from damage by reason of the improper handling of the livestock.
- **NUMBER AND TYPE OF LIVESTOCK** – The number and type of livestock authorized in the lease will be based on Animal Unit Months and season of use documented by the conservation plan. Number and type of livestock will be described on each lease.
- **ON-AND-OFF PERMIT** – BIA recognizes other lands controlled by the lessee where livestock grazing occurs in common with trust Indian land or in management rotations by the lessee.
- **PROPER USE/UTILIZATION** – Grasslands and rangelands shall not be over-utilized. Lessee agrees that upon written notification from BIA approving official of full utilization being reached; all livestock will be removed not more than three days after notification. Livestock shall not be turned back in for the remainder of the grazing season. In the event of unforeseen climatic conditions which result in reduced or suppressed forage growth, the current stocking rate will be adjusted by BIA approving official. Lessees agree to reduce livestock numbers within ten days of notification by the Superintendent to the new level.

The new stocking rate will be abided by for the remainder of the growing season. Liquidated damages: \$\_\_\_ per head over adjusted stocking rate plus removal of all livestock for the remainder of the year.

- **RESIDUE MANAGEMENT** – Adequate crop residue shall be left on the field as an aid to prevent wind and water erosion of topsoil. Small grain and row crop residue shall not be less than 30% after harvesting. When cutting corn for silage, four rows shall be left every 20 rods to prevent wind erosion. Liquidated damages: \$\_\_\_ per acre.
- **SALTING OF LIVESTOCK** – When required by BIA approving official all livestock grazed under permit must be salted regularly at such places and in such a manner as may be designated.
- **SEASON OF USE** – The grazing days or months authorized in the lease. Season of use will be based on Animal Unit Months of grazing and number and type of livestock. Season of use will be described for each lease.
- **SOIL FERTILITY MANAGEMENT** – Cropland fertility will be maintained by either the use of a legume in a normal rotation or by the use of commercial fertilizers. Soil testing should be used for crop planning and a copy of the plan shall be filed with BIA Agency. No out of season application of fertilizer (fill-in dates) will be allowed.
- **STRIP CROPPING** – Fields requiring a system of strip cropping, field strips shall be rotated so that 50 percent of the cropland will be in summer fallow each year, with crop strips and fallow strips alternating. Liquidated damages for non-compliance is \$\_\_\_ per acre and/or the lessor's share of the crop.
- **TILLAGE OPERATIONS** – Precautions shall be taken to avoid any field operations (including livestock use) at such times when soil moisture conditions are conducive to soil puddling and compaction. All tillage operations shall be with an implement that will produce a surface mulch, stubble mulch, rough cloddy condition, or ridged surface considered satisfactory by the Secretary. A residual cover shall be maintained on all cropland when growing crops are not present on the land. All tillage and planting operations on land over 3% slope shall be on the contour. No fall tillage shall be performed on land over 3% slopes. No fall tillage after (give date) will be allowed unless prior written approval is acquired from BIA approving official or their representative. Plow down date for cotton stubble is (give date). Tillage and planting operations will be performed by the lessee on cropland in such a manner that at least 25% of the surface will be covered by residue after seeding to prevent wind and water erosion. All tillage practices will follow the contour on all terraced cropland and all cropland which contour guide lines are laid out. Liquidated damages: \$\_\_\_\_\_ per acre for non-compliance.
- **WATERWAYS** – All waterways shall be maintained in good condition. Waterways indicated on land use maps presently not in grass shall be shaped and seeded according to an approved plan with a minimum of \_\_\_% native species not later than (fill-in date).



**Use of Non-Standard Lease Provisions**

Non-standard lease provisions fall into two categories -- those provisions that are unique to a tribe and those provisions that are unique to a lease as in the case of a negotiated lease where parties have agreed to specific terms. It is recommended that realty staff use standard provisions to satisfy the issue rather than developing new provisions whenever possible. The use of unique provisions may require that the lease be reviewed at the next level of program authority or by the Solicitor's Office to insure the proper commitments are made by the government and the interests of the beneficiaries are protected. Additional guidance on this topic may also be found in the Regional Leasing Addendum or other policy directives.

# Exhibit 7

## Reporting

## REPORTING

### ANNUAL PERFORMANCE, ACREAGES and LEASE (APAL), GOVERNMENT PERFORMANCE AND RESULTS ACT (GPRA) AND WORKLOAD LOGS

#### OVERVIEW:

This document provides instructions for preparing logs and reports by encoding data into them, compiling and submitting the overall Real Estate Services Annual Performance, Acreage and Lease (**APAL**) Report, and the Government Performance Results Act, (**GPRA**) Report and Transaction Logs. The **APAL** Report replaces the annual caseload report and will institute the use of 15 Mandatory Transaction Logs. These Logs will serve to validate the submission of **GPRA** performance data pursuant to the Department's guidance and the Annual Performance, Acreage and Lease Report. The reports and logs are contained in a Microsoft Excel spreadsheet application.

Reports and logs are mandatory for Bureau of Indian Affairs' offices, including Indian Tribes operating BIA real estate services programs under Self-Governance compacts or 93-638 Self Determination contracts.

- The report and logs pages are pre-set using pre-defined headers/footers, margins, pages, and names.
- The reports and logs appear in color and can be printed in color if a color printer is available.
- A glossary has been added to assist personnel with the terminology on the reports and logs.

#### PURPOSE:

The new reporting formats are designed to facilitate more accurate reporting of caseload. Additionally, the new reporting formats will enable the BIA offices to more readily comply with the Department's **GPRA** quarterly reporting requirements. Adherence and compliance with the **GPRA** should ensure the following:

- **Validated data.** Data must be measurable, understandable, and directly related to the program goal activity.
- **Verified data.** The data quality is determined by the checks and balances built into the reporting and log format.
- **Automated reports.** This reporting process will allow Bureau Regional offices to provide for the submission of the appropriate data using the standardized electronic report.

#### REPORTS & LOGS:

Furnishing copies of the Transaction Logs is mandatory and must accompany the Annual Performance, Acreage and Lease Report when submitted to Central Office at the end of each calendar year. The primary purpose of the **Transaction Logs** is to confirm and verify the data contained in the Annual Performance, Acreage and Lease Report as well as to supply data for routine public inquiries.

#### **Report of Annual Performance, Acreage and Leases**

The entire report is comprised of three (3) separate reports and they are consolidated to arrive at the Annual Performance, Acreages and Lease Report. It is submitted annually at the end of each calendar year and is due in Central Office no later than January **31st**. This is the primary report that should reflect the annual caseload for each Bureau Field/Agency and Regional office as well as those Indian tribes who have compacted or contracted the functions of the BIA real estate services program. Copies of the Workload Logs must be attached to it by of the Bureau Office or Indian tribe.

### **Government Performance Results Act (GPRA)**

This one (1) page report is submitted quarterly by each Regional Office to Central Office and it tracks performance during the quarter. It is due by the **10th** of each month following the close of each fiscal quarter; (**January-March**); (**April-June**); and (**July-September**); (**October – December**). Bureau field/agency offices as well as Indian tribes should submit reports to their respective Regional Office, and the Regional Offices submit to Central Office.

### **Transaction Logs**

There are **15** mandatory transaction logs, one for each of the Real Estate Services major functions and each contain specific information on the caseload for the calendar year. The logs are critical reports for tracking of the transactions conducted on an annual basis. **Logs 1-13 contain three (3) pages apiece.**

### **Table of Logs:**

<b>Name of Log</b>	<b>Spreadsheet Tab Name</b>
<b>1. Acquisition Log (Fee-to-Trust)</b>	<b>(Acq.Log) Fee-to Trust</b>
<b>2. Acquisition Log (Trust-to-Trust)</b>	<b>(Acq.Log) Trust-to-Trust</b>
<b>3. Disposal Log</b>	<b>(Disposal Log)</b>
<b>4. Mortgages and Deeds of Trust</b>	<b>(Mortgages and Deeds of Trust)</b>
<b>5. Land Conversions</b>	<b>(Land Con. Log)</b>
<b>6. Surface Lease &amp; Permits</b>	<b>(Sur.L.P. Log)</b>
<b>7. Amendments of Surface Lease &amp; Permits</b>	<b>(Amend.SLP)</b>
<b>8. Subsurface Lease &amp; Permits</b>	<b>(Subsurface LP. Log)</b>
<b>9. Amendments of Subsurface Leases &amp; Permits</b>	<b>(Amd SubLP. Log)</b>
<b>10. Solid Minerals Leases &amp; Permits</b>	<b>(Solid Minerals)</b>
<b>11. Amendments of Solid Minerals Leases &amp; Permits</b>	<b>(AmdSolid L&amp;P Log)</b>
<b>12. Rights-of-Way/Easements &amp; Condemnations for R/W</b>	<b>(Rights-of-Way Log)</b>
<b>13. Administrative Appeals</b>	<b>(Administrative Appeals)</b>
<b>14. Bond Log</b>	<b>(Bond Log)</b>
<b>15. Probate Log</b>	<b>(Probate Log)</b>

**Copies of all reports and logs are shown in the Appendix of this Instruction Manual.**

The diskette accompanying this document contains four (4 ) files:

“**#1 Instructions**” are in Microsoft Word and Word Perfect. You are encouraged to print the instructions for easy reference and use.

“**#2 Logs**” are in Excel and are for the tracking of workload. Logs must be submitted with the **APAL** to validate the caseload. The logs from **1-13** have **3** pages. Logs **14** and **15** have only one page apiece.

“**#3 GPRA**” is a one page report and is for compliance with the Government Performance Results Act. This is required to be submitted quarterly. Please review and acknowledge the required report.

“**#4 Reports**” are in Excel and contain the required report formats for Annual Performance, Leases and Acreages. The Report/ (Files) are divided into 5 parts, but each report (file) correlates with each other or a specific report (file) to comprise the full annual caseload report. Part 1, is the Annual Performance report that contains 7pages; Part 2, is the Total Number of Leases/Permits In Force Effect by Reservation that contains 3 pages; Part 3, is the Acreages By Agency and Summary of Surface Leases In Force And Effect; and Part 4 accompanies Part 3 for the Summary of Surface Leases and Permits In Force And Effect. These reports are to be combined and there are 2 pages. Part 5, is the Acreages by Agency and reports 3 & 4 are completed for use with this report.

### **General Information; Basic Instructions For Maintaining Logs; Completing Reports and Data Field Descriptions:**

The following information and instructions apply to the use of Excel spreadsheets. This information is provided so personnel responsible for conducting the data entry can perform the necessary tasks. The reports and logs are formatted (e.g., set margins, pages and names). Both the logs and reports are encoded in similar type functions. The encoding of the logs is explained in the following instructions and can be cross - referenced in encoding the reports. If you experience problems with a software operation such as encoding, editing or copying a page, printing, or certain corrections, and you are unable to troubleshoot the problem(s), they should be discussed with a person with knowledge of Excel such as the local **IT** staff. Any assistance in explaining the data collection, reporting or on non-software/hardware related matters, please contact Ms. Barbara Davis at **(202) 208-5473**.

### **User Competence:**

Users need to have a fundamental working knowledge of **Excel**. It may be necessary and beneficial for persons responsible for preparing and maintaining the Reports and Logs to obtain Excel training. Also, instructional books such as Excel for Dummies are very helpful.

### **Hardware and Video Card Differences:**

Although the reports and necessary logs were designed to prevent problems with data entry, potential changes and deletion of specific data field problems could be encountered with the users' hardware, e.g. printers when prepared to print documents. If you are unable to troubleshoot problems, please consult local IT staff for assistance.

### **Spreadsheet Display:**

Always save the Report and Log spreadsheets in 100 % document size. This should minimize the effect of possible variations in the document. You can read and confirm the size by utilizing the numeric icon in the upper right hand side of the monitor on the menu toolbar. If your numeric icon does not read 100 %, click your mouse on the down arrow and a Drop Down Menu will appear. You can then select the 100 % by placing a cursor on it and click your mouse to accept. This will complete the task.

These instructions are provided to assist you in addressing and completing the Reports and Logs when encoding the data, making minor corrections to data entry, and printing the documents.

**Reports and Logs:**

The reports and logs will require both alpha and numeric data entry. The alpha entry will be used in text typing entry.

**Accessing Files:**

- The reports and logs will be accessed in the same manner. You will insert the diskette and proceed to the proper file.
- Once in the appropriate file, for example, if in the **Transaction Logs** file, you must review the lower left hand portion of the screen monitor to select the proper **tab** for the log you wish to select to encode your data. File Nos. **2** and **4** have **tabs** that need to be accessed to work on the encoding of data.

**Encoding:**

- Data entry into the Workload Logs is the single most important task. Proper maintenance of the logs should enable the timely completion of the quarterly **GPRA** report and the **APAL**.
- The reports and logs will require the entry of both **alpha** and **numeric** data.

**Alpha:** The alpha is general text typing.

**Numeric:** Remember to always be careful when entering numeric data. Try to never use **delete** when editing or attempting to fix an entry. Always enter **O** and press **Enter** to correct an entry error. Additionally, the use of decimals is limited to entering partial numbers e.g; **\$10.50** or **00.50** acres. The commas for the numeric/mathematical data entry to represent thousandths **1,0 0 0's** are automatically formatted on the logs and reports. For example, it is only necessary to enter 1 0 0 0 and press Enter to complete the task. **The comma will automatically be entered.**

- Fields highlighted in yellow indicate that they need to be entered first.
- Also save your work periodically during the data entry process to prevent the loss of entered data.

**Editing:**

- Cells other than those for data entry have been protected to prevent accidental alteration.
- Data entered by the operator/encoder may be modified or deleted by using Excel standard procedures.

**Printing:**

- The individual report sheets have been formatted to print in landscape style using standard Excel print commands. No changes should be made to the format of these reports.

**Basic Instructions for Encoding Logs:**

The basic instructions are described by first explaining the encoding of logs and secondly, instruction for completing reports. Data entry for both is accomplished as follows:

### **Encoding Data.**

Insert the diskette into the **PC** and load the appropriate **log** or **report** e. g; if you are working on fee-to-trust cases go to the **Acquisition Log** tab at the lower left hand portion of the screen monitor to locate the log to begin data entry.

**Click** on the tab by pressing the left button of the mouse. Your log should appear. Each log has similar type basic data fields in the upper portion of the log. This information consists of; Name of Tribe, Name of Reservation, Land Area Code, Reporting Period, and the Name of the Regional Office and Agency, the Type of Applicant to specify whether the application is Tribal or Individual. The next portion of the log will be the Type of Transaction information. On the logs **only** the transaction data field information, will change. Observe the lower portion of the screen monitor to check appropriate **tab** for the name of the **log** or **report** you want to enter data. You may directly select the appropriate **log** by moving through the **tabs** specified for that workload **log**. Use the **black** arrow keys in the lower **left hand** portion of the **toolbar** of the screen monitor to **scroll** through **tabs** to locate the proper log. The log tabs are developed so the encoder can move horizontally to select the proper **log** for reporting purposes.

Once you've located the proper log, Click on the left button of the mouse. For example, when entering data for fee-to-trust cases, select the Acquisition Log. For other types of data entry e.g., land sales go to the Disposal Log, for rights-of-ways, go to the Rights-of-Ways/Easements & Condemnation For R/W Log etc. Refer to the Table of Logs on page 2 to familiarize yourself with each log.

Proceed to enter the data by starting in the upper left hand corner of the yellow highlighted area for the Name of Tribe on the log. This is accomplished by moving the cursor with the mouse and click once on left button portion of the mouse to begin data entry. Always place your cursor in the far left portion of the designed cell. In some cases, the cursor will be in the fully expanded cell, so all you must do is begin typing the data. The reason is because in expanded cells you can just begin typing and this will avoid the information being in the wrong cell area. For example, names of reservations and counties/boroughs/parishes are longer in many cases and by beginning your data entry in this manner, should minimize typing errors.

Begin data entry by typing the text information e. g; for Name of Tribe, type the text and press Enter on the keyboard to complete the entry. Or, you may just Click the right button on the mouse.

**Next** - proceed to the Name of Reservation and complete the same process. Type the text and press Enter on the keyboard to complete the entry.

**Next** - proceed to the yellow highlighted area of the Land Area Code. Type the numeric entry of the land area code and press Enter.

**Next** - proceed to the yellow highlighted area of the Name of Region and type the specific name of the Region. In order to navigate through the spreadsheet, move the cursor with the mouse or press Enter or scroll through the spreadsheet by pressing the arrow keys on the lower right hand corner portion of the keyboard to proceed to the next or other highlighted areas.

**Next** - proceed to the yellow highlighted area of the Name of the Agency, type the text and press Enter. The information for the Land Area Code, Name of Regional Office, Name of Agency portions etc., of the log is critical for identifying reservation, land area code, region, agency, tribe etc.

**Next** - proceed to work through the log by entering the data either in alpha or numeric data entry into the portions of: Type of Applicant by numerically entering x and press Enter or press the arrow keys on the lower right hand portion of the keyboard to complete the entry. This will indicate the type of case e. g; whether it is tribal or an individual you are processing;

**Next** - proceed to the Purpose or the Name of Tract/Parcel No and for Leases, place the lease or permit number. This will provide an opportunity to identify the purpose of project by typing in the text portion or identifying a purpose; e. g, casino, home site, lease number or allotment number, tract or parcel number or some other type of identifying data; e. g, LTRO title document information that you may want to confirm, note, or safeguard. This information is critical to identify the type of case being processed e.g. fee-to-trust, land sale, patents-in-fee, business leases, rights-of-way etc.

**Next** - proceed to the On/Off Reservation portion. Enter by typing the number x and press Enter or by pressing the arrow keys in the direction you want to go on the spreadsheet to complete the entry. It is critical to identify whether the case is on or off the reservation for statistical purposes.

**Next** - proceed to work through the field data by entering the data for the information for; Acres; County/Parish/Borough, and the Name of State etc. Remember, we are only required to enter the two (2) letter code of the State where the case/transaction is located.

**Next** - proceed to work through the field data by entering the data for the date of application for fee-to-trust for example and press Enter.

**Next** - a critical area of the log is the Type of Transaction. This will identify the type of transaction for a specific workload. The information identifies a specific transaction on the respective log. The acquisition logs do not have this category, but most of the others do except Bonds and Probate.

**Next** - enter the an x and press Enter for the action taken status of the log. This information is important because it provides for the status of the case/transaction and if it was approved, disapproved or withdrawn as a transaction.

**Next** - proceed to the Income Collected field area. This is important for the accountability of funds earned and derived from trust or restricted property, if applicable. Proceed to encode the monetary value by entering the exact amount earned or received and press Enter. This will complete the task.

**Finally** - enter the text data for Transaction Dates/Remarks/Comments, portion of the log. In the acquisition logs, there are specific date categories for application date received by BIA, and approval, disapproval and withdrawn dates. For the other logs, use the portion for specific dates and comments/remarks to the file. For example, if you have special instructions, special notes or other critical information you want to enter here, for instance the date a transaction was approved, this is where you can place it.

To edit any portion of the spreadsheet, proceed to the instructions specified in B. Editing Data.

#### **Basic Instructions for Encoding Reports:**

- The encoding of the reports is similar to the logs and the same principles apply.



- To access the reports, proceed to file No. 4, Reports and double click the right mouse button. This file contains five (5) reports.
- Once you are entered into the reports, scroll down to the lower left hand portion of the screen monitor.
- Use the arrow keys in the lower left corner of the screen, reviewing the Tabs.
- The tab reports are designed so the Encoder may access a specific report.
- For example, you may want to access Report No. 1, the Annual Performance Report. This report correlates specifically with the logs and is a summary of the approved, disapproved, withdrawn, acreages affected and income earned from the transaction, if applicable.
- Once accessed into the Annual Performance Report, begin entering your data and press Enter, the task will be completed.
- Proceed to entering data and once completed, save file and move to next file.
- Use the tab arrows located at the lower left hand portion of the screen monitor if you are unable to see the report you want.
- Move the arrow keys from left to right to locate a specific report.
- Proceed with the following instruction below in order to edit and print your documents.

### **Editing Data.**

Press **F2** to enable the editing of data. The log may be navigated by moving the cursor to a selected cell with the mouse. Always place your cursor in the left portion of the cell you want to begin typing on. Once data is edited, press **Enter** and the task is completed. **Or**, you may proceed to the upper left hand portion of the toolbar and press **Edit** with the left button of your mouse. Once in the Edit area, proceed to go through the proper information to complete your task of editing. Again, if you should experience problems that you are unable to trouble shoot, consult your local **IT** staff for assistance.

### **Printing Data.**

Place the cursor on the printer icon on the upper left hand portion of the toolbar, click once and proceed with intent of print job. This will allow you to print your material.

Or,

Proceed to the upper left hand portion of the toolbar and press the File portion with the mouse. This will provide the menu prompt and you can select Print by selecting the right button of the mouse. Follow through with your intended process of the print job. This should complete your task.

Please remember that once you complete the task of encoding the logs, that in order to move on to the other and the main reports, it is recommended that you do not leave different documents open **or** open up several windows at once. **Rather**, it is recommended that you close out of the logs and open up the other reports on their own.

**Field Descriptions and Definitions For the Reports and Logs:**

The following definitions are provided to assist you in addressing and completing the **Reports and Logs** when encoding the data, making minor corrections to data entry, and printing the documents.

Acres - The acres affected by a transaction.

Action taken - Decision for a case is approved, disapproved or withdrawn.

Agricultural Lease - A lease granted and approved for agricultural purposes.

Applicant - An individual Indian or tribe requesting an action.

Approved - The action taken to effectuate a transaction.

Assignments - Act of transferring an agreement from one party to another.

Business Lease - The agreements for commercial, industrial or business use.

Cancellation - The administrative action taken to cancel a lease with show cause.

Codicils - A written document that changes the original intent of an individual's Last Will & Testament.

Collective Bond - A region-wide bond used for oil and gas and guarantees performance.

Communitization Agreement - Agreements that group acreage to form a spaced unit for operation and production.

Condemnation - The judicial process of taking land for public purposes and is often referred to as eminent domain.

Condemnation of Title - Is the judicial process for taking land for public purposes.

County/Parish/Borough - Is a political subdivision within a state.

Disapproved - A transaction that is denied.

Expiration - The act of termination upon its own terms, or the BIA has taken administrative action to terminate a lease for cause on behalf of a Tribe or individual Indian.

Fee-to-Trust - The process used by Indian and tribal applicants to acquire title to land in trust status.

Income Collected - Funds derived from contractual agreements on trust or restricted land.

Land Area Code - The code used by LTRO to identify land of a Tribe in Alaska and the Lower 48 States. This code will be used to standardize reporting purposes for all Regions.

Land Exchanges - The exchanging of land or interests of land.

Land Sales - Transaction that disposes of title to trust or restricted land.

Modification - A change in the provision or provisions of an agreement.

Nationwide Bond - An oil and gas lease bond which secures a company's operations on Indian lands within the United States.

Office - A Tribal Office, Field, Agency, Regional Office or Central Office.

Oil & Gas Lease - An agreement that may involve the extracting, transporting, and marketing of petroleum products.

Other - Is a transaction other than a fee-to-trust acquisition e.g., trust-to-trust, restricted-to-restricted.

Other (Federal Transfer) - The conveyance of federal lands for the use and benefit Indian Tribes and individual Indians.

Other than Oil & Gas - An agreement that is approved by the BIA that does not include oil and gas products, but may include solid minerals of copper, uranium, coal etc.

Other (Unique to Region) - Other transaction that may be accounted for by a Region that is unique to its region in this work area.

Partitions - Divisions of land into separate and distinct parcels.

Patents-in-fee - Process for an individual to remove trust or restricted title.

Permits - Agreements that grant a revocable privilege to use Indian land or Government land for a specified purpose.

Probate Case - Compilation of family heirship data and inventory of trust/restricted assets on a deceased individual Indian.

Purpose or Name of Transaction - The reason for the transaction.

Reporting Date - The date the report is completed.

Remarks/Comments - Is the section of the report or log that an Encoder may want to enter as a note or remark for clarification for accountability purposes. For example, if processing land sales an Encoder may want to note a cash sale, deferred payment sale etc., as a comment/remark. In addition, this space may be used to enter in parcel, allotment number, tract, lease number, permit number etc.

Order for Removal of Restrictions - The removal of restrictions against alienation of Indian lands.

Reservation - A reservation, rancheria, community, pueblo or Indian Colony, or Alaska Native Reservation, Village or Group, located within the jurisdiction of the Bureau of Indian Affairs, within Department of the Interior.

Reservation Code – no longer used. See Land Area Code.

Residential Lease - An agreement for the purposes of housing.

Restricted-to-restricted - Property that is held in restricted status and conveyed to restricted status.

Restricted-to-trust - Title to property that is held in restricted title and conveyed to trust status.

Revocation - A revocation of a will by an Administrative Law Judge (ALJ).

Rights-of-way – The right to use property for a specific purpose.

State - One of the fifty (50) states in the United States.

Sublease - A written agreement which is a subordinate right the tenant grants to an individual or entity a right to possession no greater than that held by the tenant under the lease.

Termination (Voluntary Cancellations & Cancellation for Cause) - A lessee or tenant voluntarily cancels a lease, or it is cancelled for cause by the BIA or tribal contractor.

Tribe - The specific name of a federally recognized tribe being entered into the report and logs for recording purposes.

Trust-to-Trust - The conveyance of trust title to trust.

Unit Agreement - An agreement that groups lands into a development unit.

Wills - A written document that distributes the assets of deceased individual.

Withdrawn - An action that withdraws a case/transaction from consideration.

# Glossary of Terms

## GLOSSARY OF TERMS

### ADMINISTRATIVE FEES

Administrative fees are collected pursuant to the regulations, such as 25 CFR 162.241 for agricultural leases. 25 U.S.C. § 415, states that the Secretary is authorized to “ . . . collect reasonable fees to cover the cost of any and all work performed for Indian tribes for individual Indians, to be paid by vendees, lessees, or assignees, or deducted from the proceeds of sale, lease, or other sources of revenue . . . ” There are additional regulatory provisions regarding how the fees will be collected and where they will be deposited and credited.

### AGRICULTURAL LAND

Indian land or Government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.

### AGRICULTURAL LEASE

A lease of agricultural land for farming and/or grazing purposes.

### AIARMA

American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2001, 25 U.S.C. 3701 *et seq.*), as amended on November 2, 1994 (108 Stat. 4572). The AIARMA had several effects on leases and permits and on the regulations that had been published in 1961, as 25 CFR 162 Leasing and Permitting. The Act not only affirmed existing authorities, it further delineated specific authorities, extended lease tenure authority, and under specific circumstances allowed for an exemption from certain tribal rules.

### ALIKUOT PARTS

Strictly speaking, aliquot means contained in something else an exact number of times. The term is used in legal descriptions of rectangular surveys to divide a parcel of land by divisions of one-half or one-quarter section or any further division of that section by equal halves and quarters. Aliquot parts are described in relation to the four points of the compass using the compass abbreviations of N, S, E and W.

### ARPA

Archaeological Resources Protection Act of 1979, P.L. 96-95; 93 Stat. 721; 16 U.S.C. 470aa. This Act provides for the protection and management of archaeological resources, and specifically requires notification of affected Indian tribes, especially if the proposed archaeological investigation is within an application for lease or permit and the investigation would result in harm or destruction of any location considered by the tribe to have religious or cultural importance.

### ASSIGNMENT

A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. It includes transfers of all kinds of property including negotiable instruments. The transfer by a party of all of its rights to some kind of property, usually intangible property such as rights in a lease, mortgage, agreement of sale or a

partnership. For example, transfer of a lessee's entire interest in a lease to an assignee through an agreement. The assignee acquires all of the lessee's rights and assumes all the lessee's obligations under the lease.

**BASE LINE**

In the rectangular survey system, the true east-west line extending from the initial point in both directions. For example, the survey line used in the government survey to establish township lines or the horizontal elevation line used as centerline in a highway survey.

**BOND**

A certificate or evidence of a debt. For example, a performance bond protects against loss due to the inability or refusal of a lessee to perform certain lease obligations. A bond is furnished by the lessee, or a guaranty of performance is furnished by a third-party surety.

**BUSINESS LEASE**

Any commercial/business development on trust or restricted lands except for management contracts, joint venture agreements, or other encumbrances of tribal land as covered by 25 U.S.C. § 81, as amended.

**BUSINESS VALUATION**

The act or process of estimating the value of a business enterprise or an interest therein.

**CHAIN OF TITLE**

Successive conveyances, or other forms of alienation, affecting a particular parcel of land, arranged consecutively, from the government or original source of title down to the present holder.

**CLEAN WATER ACT OF 1972**

This act was designed to restore and maintain the chemical, physical and biological integrity of American waters. Any action that constitutes a discharge of certain materials into lakes, streams, rivers, ponds, wetlands, or other waters requires a permit from the Corps of Engineers. The tenant should be responsible for maintaining any and all permits required.

**CLOUD ON TITLE or CLOUDED TITLE**

An outstanding claim or encumbrance which, if valid, would affect or impair the title of the owner of a particular estate, and on its face has that effect, but can be shown by extrinsic proof to be invalid or inapplicable to the estate in question.

**COMPENSATION**

Consideration or price of a privilege purchased, for example value given in exchange for a contract.

**CONDEMNATION**

A process by which the property of a private owner is taken for public use under the power of eminent domain for just compensation.

**CONSULTATION STATEMENT**

A range of potential market values provided by an appraiser for use with low risk transactions.

**CONTRACT**

An agreement between two or more persons or parties that creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.

**CONVEYANCE**

The transfer of legal title to the land or interest in the land from one person, or class of persons, to another.

**EASEMENT FOR RIGHT-OF-WAY**

A right of use over the property of another that creates an interest in the land, is for limited use or enjoyment, can be protected against third parties, and is not terminable at will by the Indian landowner.

**EMANCIPATED MINOR**

A person under 18 years of age who is totally self-supporting. For example the person may be married or a person determined by a court of competent jurisdiction to be able to take care of him or herself.

**ENVIRONMENTAL ASSESSMENT**

A report outlining the quality of the land, determining the potential impact of the proposed activity on the land and if the potential for damage is high, suggesting alternative measures for the action.

**ENVIRONMENTAL IMPACT STATEMENT**

A document required by federal and state laws to accompany proposals for major projects and programs that will likely have an impact on the surrounding environment.

**ESCROW**

A writing, deed, money, stock, or other property delivered by the grantor, promisor or obligor into the hands of a third person, to be held by the latter until the happening of a contingency or performance of a condition, and then by him delivered to the grantee, promisee or obligee.

**ESTATE**

The degree, quantity, nature, and extent of interest which a person has in real property. The term estate is also used to designate the property in which someone owns a right or an interest.

**EXECUTE**

To complete; to make; to perform; to do; to approve; to carry out according to its terms; to fulfill the command or purpose of. To perform all necessary formalities, as to make and sign a contract, or sign and deliver a note.

**FAIR ANNUAL RENTAL/FAIR MARKET RENTAL**

The amount of rental income that a lease of trust/restricted Indian owned land would command in an open competitive market.



**FAIR MARKET VALUE**

The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. By fair market value is meant the price in cash, or its equivalent, that the property would have brought at the time of taking, considering its highest and most profitable use, if then offered for sale in the open market, in competition with other similar properties at or near the location of the property taken, with a reasonable time allowed to find a purchaser. Usually the fair market prices will be the price at which bona fide sales have been consummated for assets of like type, quality and quantity in a particular market at the time of acquisition.

**FEASIBILITY ANALYSIS**

A study of the cost-benefit relationship of an economic endeavor in order to determine if the endeavor is capable of being done, executed, affected or accomplished with reasonable assurance of success. An analysis undertaken to investigate whether a project will fulfill the objectives of the investor. The profitability of a specific real estate project is analyzed in terms of criteria of a specific market or investor.

**FEE INTEREST**

An interest in land that is owned in unrestricted fee status and is freely alienable by the fee owner.

**FONSI**

A Finding of No Significant Impact is a document issued in association with a lease and determines that the lease or permit purpose will have no significant impact on the natural and human environment. This document is based upon the findings of an environmental assessment and is usually provided by local BIA environmental staff.

**FRACTIONATED TRACT**

A tract of Indian land, a portion of which is in trust or restricted status owned by a tribe or individual in common with other owners. These other owners may own interest(s) in trust status, restricted status, or fee status, each holding undivided interest(s) therein.

**GOVERNMENT OWNED LAND**

Land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and benefit of Indians and not included in the definition of individually owned land or tribal land.

**GPRA**

The Government Performance and Results Act (GPRA) of 1993, requires government agencies to submit annual performance plans to Congress along with fiscal year budget requests.

**GRANT**

To give or permit as a right or privilege; e.g. grant of route authority to a public carrier. The Secretary, as provided by Congress, may grant a right-of-way with the consent of the Indian landowner(s).

**GROSS RECEIPTS**

Rent is computed as a percentage of the gross business income or revenue of the lessee.

**IDLE LAND**

Land that is not currently under lease for any purpose and not being used by the landowner(s).

**INDEMNIFICATION**

Security against liability for any loss, damage, or injury or claims from a liability, such as those arising from the use of the leased premises, shifting from one person held legally responsible to another person. This security against liability includes all costs and expenses that may be connected with any claim.

**INDIAN LAND**

Any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status.

**INDIVIDUALLY OWNED LAND**

Land or any interest therein held in trust by the United States for the benefit of individual Indians and land or any interest therein held by individual Indians subject to Federal restrictions against alienation or encumbrance.

**INGRESS/EGRESS**

The act of entering on or exiting off the land. The right of ingress and egress may be granted a lessee.

**INTEREST**

An ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.

**LEASE**

A written agreement for an agricultural lease, residential lease, or business lease, between Indian landowners and a lessee. The lessee is granted a right to possess Indian land for a specific purpose and duration.

**LEASEHOLD ENCUMBRANCE**

A mortgage, deed of trust, or other lien on the leasehold interest given to secure the repayment of a loan obtained by the lessee.

**LEASEHOLD INTEREST**

The interest in real property acquired by a lessee to use and profit from that interest.

**LESSEE**

One who rents property from another. The person/entity using the land of another through a lease. This term is used interchangeably with tenant.

**LESSOR**

One who rents property to another; the landowner or entity leasing land to another.

**LOT**

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Any portion, piece, division or parcel of land, usually a fractional or odd shaped tract of land not generally describable by aliquot parts.

**MAJORITY INTEREST**

More than 50% of the trust or restricted interests in a tract of Indian land.

**MASS APPRAISAL**

The process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing.

**MASTER LEASE**

The original approved lease. The main lease which governs leases or subleases that follow it.

**METES AND BOUNDS**

A land description that is measured by the limits (metes and bounds) of all courses on the outside boundary of the parcel being described. In legal land descriptions, this measurement is shown as degrees, minutes and seconds. The symbols used in this type of description are:

degrees °

minutes !

seconds ∇

i.e. 27°53!02∇ *would be read aloud as 27 degrees 53 minutes 02 seconds*

**MINOR**

A person who is under the age of legal competence, usually described as a person under a certain age. In most states, a person is no longer a minor after reaching the age of 18.

**MODIFICATION**

A change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject matter intact. The instrument used to change a provision of an active lease.

**MORTGAGE**

An interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt. For example, a deed of trust or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

**NAGPRA**

Native American Graves Protection and Repatriation Act of 1999, P.L. 101-601; 25 U.S.C. 3001. This Act provides that Federal Agencies must consult with Indian tribes or individuals prior to authorizing the intentional removal of Native American human remains, funerary objects, sacred objects, and objects of cultural heritage. Federal agencies and effected tribes of individuals must agree as to the handling and disposition of "cultural items" as defined by the Act.

**NAHASDA**

Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), 25 U.S.C. § 4211. Section 702 of this act provides that leases for "housing development and residential purposes" may run for a primary term of up to 50 years (this includes residential leases granted to non-tribal, privately-financed developers).

**NEPA**

National Environmental Policy Act of 1969, as amended, P.L. 91-190; 83 Stat. 852; 42 U.S.C. 4321. This Act establishes national policy for protection and enhancement of the human environment. As stated in the Act, a portion of the function of the Federal Government, is to “preserve important . . . cultural . . . aspects of our national heritage and maintain whenever possible an environment which supports diversity and variety of individual choice.”

**NET LEASE**

A lease in which provision is made for the lessee to pay, in addition to rent, other expenses that may include, but are not limited to, taxes, insurance premiums, irrigation operation and maintenance charges, utility costs, and improvement assessments.

**NHPA**

National Historic Preservation Act of 1966, P.L. 89-655; 80 Stat. 915; 16 U.S.C. 470, as amended in 1980, P.L. 96-515; 94 Stat. 3000; 16 U.S.C. 470a. This Act addresses the preservation of historic properties, including historical, archaeological, and architectural districts, sites, buildings, structures, and objects that are eligible for the National Register of Historic Places. Properties may be eligible in whole or in part because of historical importance to tribes, Alaska Natives, and individual Indians including traditional religious and cultural importance.

**NON COMPOS MENTIS**

Not sound of mind. A person who has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

**NOTARY PUBLIC/NOTARY**

A public official appointed under the authority of a state, district, territory, or commonwealth law that gives the individual the power to administer oaths, certify affidavits, take acknowledgments, and attest to the authenticity of signatures.

**PERMIT**

The revocable right to use the land of another for a specific purpose, usually for a limited period of time. Permits are non-exclusive and not assignable.

**PRINCIPAL MERIDIAN**

In the rectangular survey system, the true north-south line extending from the initial point in both directions.

**RANGE**

In the rectangular survey system, a row or tier of townships lying east or west of the Principal Meridian and numbered successively to the east and to the west from the Principal Meridian.

**RANGE LINES**

True north-south lines approximately six miles apart either east and/or west of the Principal Meridian and of each other that make up the east and west boundaries of each township.

**RECLAMATION**

The process of bringing economically unusable land to a higher dollar value by physically changing it; e.g. draining a swamp, irrigating a desert or replanting a forest. Measures undertaken to bring about the necessary reconditioning or restoration of land or water that has been affected by exploration or mineral development, mining or onsite processing operations, and waste disposal, in ways which will prevent, or control onsite and offsite damage to the environment.

**REMAINDER/REMAINDERMAN**

One who is entitled to the remainder of the estate after a particular estate carved out of it has expired. For example: A life estate in a piece of property expires upon the death of the life estate holder and the remainder/remainderman is the rest of the estate owners.

**RENTAL/RENT**

The consideration paid for use or occupation of property, such as land or buildings.

**RESIDENTIAL LEASE/HOMESITE LEASE**

A lease for the surface and or development of a parcel, together with improvements thereon, for the purposes of housing.

**RESTRICTED FEE LAND OR RESTRICTED STATUS**

Title to land which is held by a tribe or an individual Indian subject to restrictions that can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law.

**RIGHT-OF-WAY**

A non-possessory right of a person, class of persons, or entity to use or pass over the land of another for a specific purpose. The term ROW is often used interchangeably with the term easement.

**SECRETARY**

The Secretary of the Interior or his/her authorized representative acting under delegated authority.

**SECTION**

A tract of land, one mile square, within a township containing approximately 640 acres. Approximately 1/36 of a township.

**SECTION LINES**

North-south and east-west lines that are respectively parallel to and at intervals of one mile from the eastern and southern boundaries of each township.

**STATUTE**

A law enacted by a legislative body (e.g. the U.S. Congress, a tribal government, or a local or State legislature, etc.)

**SUBLEASE**

A written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the master lease.

**§**

Section. For example: 25 U.S.C § 476, would be read as Title 25 U.S.C. Section 476.

**TAAMS**

Trust Asset and Accounting Management System - A comprehensive, national system for Indian land title and records and realty activity.

**TERMINATION**

This refers to the date when the lease ends or terminates. A lease can terminate by “expiration”; that is, the specified term runs out. It can terminate by “cancellation”; that is, the lease is abrogated or ended involuntarily before the expiration date.

**TOWNSHIP**

A tract of land contained within the boundaries of the north-south range lines and the east-west township lines containing approximately 36 square miles or approximately 23,040 acres.

**TOWNSHIP LINES**

The east-west lines that run on a true parallel approximately six miles apart and make up the north and south boundaries of each township.

**TOWNSITE**

For the purposes of this handbook this term is used exclusively in Alaska, by Eastern Band of Cherokee, and the Navajo Nation. In Alaska it refers specifically to restricted lands that were conveyed within a townsite created by the Townsite Act of May 25, 1926. At Navajo this is subject to Navajo Business Regulation Act.

**TRESPASS**

Any unauthorized possession, occupancy, or use of trust/restricted land.

**TRIBAL CORPORATION**

For the purposes of this handbook references to the term Tribal Corporation is used to identify lands that are held by the United States in trust for a tribe or an Indian corporation that has been chartered under Section 17 of the IRA. Only these tribes have the authority to approve a lease without Secretarial approval up to 25 years pursuant to 25 U.S.C. 477. Tribal Corporations that are not organized under Section 17 of the IRA may be a lessee in a lease.

**TRIBAL LAND**

The surface estate of land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians, subject to federal restriction against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 476). In some instances, tribal fee land may be subject to Secretary approval for leases (*Lummi vs. USA* 9<sup>th</sup> Circuit Case and 25 U.S.C. 177).

**TRIBAL LAW**

The body of law that governs land and activities under the jurisdiction of a tribe, including ordinances and other enactments by the tribe, tribal court rulings, and tribal common, custom or traditional law.

**TRUST LAND**

Any tract or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

**USPAP**

The Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

# List of Acronyms



## **LIST OF ACROMYNS**

The following list of acronyms and terms are not all used in this handbook. We have included several acronyms commonly used in a Realty office.

A & E Cards	Allotment and Estate Interest Cards
ADM	Attorney Decision Maker
AIARMA	American Indian Agricultural Resources Management Act
AIPRA	American Indian Probate Reform Act
ALJ	Administrative Law Judge
APAL	Annual Performance, Acreage, and Lease Report
ATSC	Alaska Title Services Center
AUM	Animal Unit Month
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
CAT. EX./CAT X/CX	Categorical Exclusion
CFR	Code of Federal Regulations
CO	Central Office, BIA - Washington, DC
DOB	Date of Birth
DOD	Date of Death
DM	Departmental Manual
DOI	Department of the Interior
EA	Environmental Assessment
EIS	Environmental Impact Statement
E-FOIA	Electronic Freedom of Information Act
EFT	Electronic Funds Transfer
E.O.	Executive Order
ESA	Endangered Species Act
FFS	Federal Finance System
FOGRMA	Federal Oil and Gas Royalty Management Act
FOIA	Freedom of Information Act
FONSI	Finding of No Significant Impact
FR	Federal Register
FRC	Federal Records Center
GMAR	Guaranteed Minimum Annual Rental
GPRA	Government Performance Results Act
HUD	Department of Housing and Urban Development
IAM	Indian Affairs Manual
IBIA	Interior Board of Indian Appeals
IBLA	Interior Board of Land Appeals
IIM	Individual Indian Monies Account
IFA	Indian Finance Act
IRMS	Integrated Records Management System
LCIR	Lease Compliance Inspection Report
LSR	Land Status Report (this term used in Alaska)
LRIS	Land Records Information Systems

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LTRO	Land Titles and Records Office
NAHASDA	Native American Housing Assistance and Self-Determination Act
NARA	National Archives and Records Administration
NEPA	National Environmental Policy Act
OHA	Office of Hearings and Appeals
OIRM	Office of Information Records Management
OST	Office of the Special Trustee for American Indians
OPAC	Online Payment and Collection System
OTFM	Office of Trust Funds Management
OTR	Office of Trust Responsibilities (BIA)
	Office of Trust Records under the office of OST
P.L.	Public Law
RDRS	Royalty Distribution and Reporting System
ROW	Right-of-Way
SDA	Special Deposit Account (OTFM)
STAT	Statute
TAAMS	Trust Asset and Accounting Management System
TIN	Taxpayer Identification Number